RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 29.

THE LOUISVILLE TRUST COMPANY, APPELLANT,

vs.

THE LOUISVILLE, NEW ALBANY AND CHICAGO RAILWAY COMPANY.

No. 30.

THE LOUISVILLE BANKING COMPANY, APPELLANT,

vs.

THE LOUISVILLE, NEW ALBANY AND CHICAGO RAILWAY COMPANY.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

( )

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THE LOUISVILLE, NEW ALBANY AND CHICAGO RAILWAY COMPANY.

ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

INDEX.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., OCTOBER 23, 1896.

a LOUISVILLE TRUST COMPANY and THE LOUISVILLE BANKING COMPANY
vs.
LOUISVILLE, NEW ALBANY & CHICAGO RAILROAD COMPANY.

Transcript of the Record

From the United States circuit court of appeals for the sixth circuit, on appeals from the circuit court of the United States for the district of Kentucky.

1 *Transcript of Record.*

Proceedings of the circuit court of the United States for the district of Kentucky, at a regular term begun and held at the Federal Court hall, in the city of Louisville, on Monday, February 20, 1894.

Present: Honorable John W. Barr, sitting as circuit judge.

LOUISVILLE, NEW ALBANY & CHICAGO R'Y CO.
vs.
OHIO VALLEY IMPROVEMENT & CONTRACT CO. *et al.* } No. 6075.

Be it remembered that heretofore, to wit, on the 9th day of April, 1890, came the complainant, The Louisville, New Albany & Chicago Railway Company, by counsel, and filed in the clerk's office of our said court its bill of complaint above against the above-named defendants, which bill of complaint is in the words and figures as follows, to wit:

UNITED STATES OF AMERICA,
District of Kentucky.

Circuit Court of the United States, District of Kentucky.

To the hon. judges of the circuit court of the United States for the district of Kentucky, in chancery sitting:

Your orator, The Louisville, New Albany & Chicago Railway Company, a corporation duly organized and existing under the laws of the State of Indiana, and a citizen of the said State, exhibits this bill of complaint against the Ohio Valley Improvement and Contract Company, the Richmond, Nicholasville, Irvine & Beattyville Railway Company, the Louisville Safety Vault & Trust Company, and the Louisville Trust Company, which are all corporations organized and existing under the laws of the State of Kentucky and citizens of such State; Adolphus E. Richards, William Cornwall, Jr., and James M. Fetter, who are all citizens of the State of Kentucky, William Dowd, Elihu Root, Joel B. Erhardt, Henry
2 H. Cook, Daniel G. Rollins, David H. Houghtaling, James Roosevelt, James S. Brice, Carroll Bryce, Walter Howe, William B. Leonard, and C. H. White and J. D. White, copart-

ners as C. H. White & Co., and Salem H. Wales and Edward H. Wales, W. L. Stow, George B. Parsons and W. G. Reed, copartners as E. H. Wales & Co., and the Bank of North America of New York, a corporation organized and existing under the laws of New York, who are all citizens of the State of New York, and John B. Carson, Robert H. Hitt and George M. Pullman, who are all citizens of the State of Illinois, and says:

1. The Richmond, Nicholasville, Irvine & Beattyville Railroad Company, hereafter called the Beattyville Company, is a corporation organized under the laws of the State of Kentucky, with franchise and power to locate, construct and operate a line of railroad in said State extending from Versailles to Beattyville, and has the said railroad in process of construction.

2. The Ohio Valley Improvement & Contract Company, hereafter called the improvement company, is a corporation organized under the laws of the State of Kentucky, with franchise and authority to build and construct railways. On October 11, 1888, the said improvement company entered into a contract in writing with the said Beattyville Railroad Company, a copy of which is herewith filed marked Exhibit "A," and made part hereof, whereby the said improvement company undertook to build, construct and equip a line of railroad for said last-named railroad company, and receive in pay therefor about $550,000 municipal bonds voted to such company and $25,000 per mile of its first-mortgage bonds, and all of its capital stock, except about $550,000. In pursuance thereof, the said improvement company entered upon the work of construction of said railroad and performed some portion of the earthwork and graduation prior to May, 1889. The entire amount of bonds proposed to be issued by such railroad company and secured by mortgage on its line is about $2,250,000, and a like amount of capital stock. The defendant Richards is the president, and the defendant Cornwall is the secretary of the said improvement company, and the principal office thereof is maintained at Louisville, Kentucky.

3. The complainant is a corporation organized and formed under the laws of Indiana by consolidation in 1881, of a former corporation of Indiana, having the same corporate name with another corporation of Indiana then existing, called the Chicago & Indianapolis Air Line Railway Company. Such articles of consolidation
3 and merger were adopted in July, 1881, by the vote of the stockholders of both such original constituent companies, which articles and the laws of Indiana in that behalf, constitute the charter of the complainant. It is specially recited therein that the complainant is a corporation of the State of Indiana, and is subject to the general laws of that State, which vest, prescribe, ordain and limit whatever powers and franchises your orator possesses; and also regulates the manner in which such franchises and powers must be exercised by your orator, in order to be valid and binding. The complainant shows that the constitution of Indiana, and the laws under which it was organized specifically require that all corporations coming into existence, after the year 1851, should be sub-

ject to all such general laws as the legislature of such State might from time to time enact. All of the line of railroad owned by the complainant is situate within the State of Indiana. Its board of directors is composed of thirteen members. Its capital stock is $5,000,000. divided into 50,000 shares, and all of the certificates issued by it and representing such shares, on their face recite that it is a corporation of such State and the complainant avers that it possesses no rightful corporate powers or franchises except such as have been granted to it by and according to the general laws and statutes of the State of Indiana prescribing the powers of railroads organized in such State, of all which public acts this court will take judicial notice, and that it is further prohibited from and incapable of exercising any power or making or performing any contract which is contrary to any of such public laws of the State of Indiana.

4. In May, 1889, and continuously to March 12th, 1890, the defendant Carson, was the chief executive officer of the complainant, exercising the chief active management of its general policy and operations, and he was also a member of the board of directors, and a trustee for your orator and its stockholders, and the defendants, Dowd, Hitt, Roosevelt, Fetter, Cook, Erhardt and Root, were also directors of your orator and like trustees. On or about the date last aforesaid, the said Richards, as president of said improvement company, being desirous of negotiating the bonds of said Beattyville railroad, and thus realize the necessary funds to carry on the work of constructing and equipment of said road, applied to said Carson to assist him in said work of negotiation, and the said Carson thereupon notified the defendant, Dowd, who was then president of your orator, that he had agreed to help the said Richards in such Beattyville enterprise. Shortly thereafter, with the active co-operation of
4 said Carson, the said Richards, acting for said improvement company, brought the subject of purchasing divers of the mortgage bonds issued and to be issued by said Beattyville Company to the attention of some of the directors of your orator, namely: to the defendants, Dowd, Carson, Roosevelt, Fetter, Root, Erhardt, Cook and Hitt, and an understanding was substantially arrived at between the said Richards and the said directors, or some of them, acting for themselves and others, that they and their friends would purchase from said improvement company one-half of the first-mortgage bonds of said Beattyville road at 90 cents on the dollar, and receive with such purchase a bonus of 51 per cent. of the entire issue of stock of said Beattyville Railroad Company. Thereupon on June 19th, 1889, to evidence the oral understanding thus reached between said Richards and some of said directors, the former submitted a proposition in writing, whereof a copy is herewith filed and made part hereof, marked "Exhibit B," whereby the said improvement company proposed to sell one-half of all such bonds at 90 cents on the dollar and accrued interest and transfer as a bonus to such purchasers 51 per cent. of all the stock of said Beattyville Railroad Company. At such time there was no agreement or understanding or negotiation of any kind that any of the

said railroad bonds were in any way to be indorsed or guaranteed by your orator, or that it was in any way to be involved in such enterprise. Thereupon as your orator is advised and believes, and so charges, the said directors and trustees, in substance informed the said Richards that his said written proposition was satisfactory and acceptable, and that they would proceed to subscribe for divers of such bonds, and endeavor to secure the balance to be subscribed for by their friends, if on investigation, the representations of the said Richards as to the affairs of said improvement company and its work of construction were confirmed. As your orator is advised and so charges, some of said directors did actually and in writing accept such proposal and subscribe for bonds in accordance therewith, and divers others orally agreed to make subscriptions thereto.

And your orator is advised and believes and so charges that said directors in execution of their understanding with said Richards did select a railroad expert, who, under their instructions and at the expense of said improvement company, visited Kentucky and inspected the proposed line of said Beattyville railroad, and the work done thereon, and made his report to said directors, and thereupon they informed said Richards that said report was satisfactory, and gave directions to said Richards as to the preparation of the bonds and mortgage to carry out such written proposal, and continued to make effort for some time after such report in August, 1889, to secure additional subscriptions at the foot of said proposal of June 19, 1889, and to recommend the said project to divers parties, and the said scheme was never at any time abandoned. In all of such matters the directors of your orator, who are defendants, acted in their own individual interest, and not in behalf of your orator.

5. The defendants, Dowd and Carson, the then president and vice-president of your orator, and being interested in said enterprise as aforesaid, caused a special meeting of the board of directors of your orator to be called on October 8th, 1889, for the declared purpose of taking action with regard to the pending proposal of said Richards as to their purchase of divers of such Beattyville bonds.

The directors of your orator who were present at such special meeting were Dowd, Carson, Cook, Erhardt, Fetter, Hitt, Postlethwaite and Root, and of such number the defendant, Dowd, Carson, Root, Cook, Erhardt, were and had been engaged in the negotiations which had been carried on upon the basis of the written proposal of Richards, dated June 19th, 1889, and had been and were then interested in such schemes, and expected to become the owners of such bonds, and such parties had an oral understanding prior to such special meeting with said Richards that such original scheme should be altered, and that they would, as directors of your orator, vote "that such bonds should be guaranteed by it."

Without the vote and presence of such interested parties there was no lawful quorum of directors present to make any contract or in any way to bind your orator, and it avers that the defendants who were then directors had no power to act for or bind your orator

in a matter wherein they had a previous personal arrangement to subscribe at a discount for the said securities, after their votes had committed your orator to a general guarantee thereof.

At the said special meeting, with such directors as aforesaid being then present, and none others, a resolution was adopted ordering the execution of a pretended contract in writing which had been orally understood and agreed to between such Richards and such directors, and drawn up in writing prior to such meeting, whereby the guarantee of your orator for the entire principal and interest was to be placed on all such $2,250,000 of first-mortgage bonds of said
6 Beattyville Railroad Company. A copy of such pretended contract as executed by the former president of your orator, and by him delivered to said Richards, is herewith annexed and made part hereof as "Exhibit C."

6. Shortly thereafter the said defendant directors in accordance with and execution of the oral understanding with said Richards as president of said improvement company, entered into prior to such meeting of October 19, 1889, that they would subscribe largely for such guaranteed bonds at 90 cents, proceeded to sign their names to a written subscription to take divers of such bonds as they had voted to be guaranteed, and the other defendants hereto, with full knowledge of all the facts aforesaid, and of the trust relations existing between your orator and its then directors, who were voting, agreeing and subscribing as aforesaid, did also subscribe for divers others of such bonds on a contract of subscription at the foot of the pretended contract of guarantee between your orator and said improvement company and the names of such subscribers, and the amount of bonds agreed to be taken by each such subscriber is hereto annexed and made part hereof as "Exhibit D." Each and every of such subscriptions to take and pay for certain of said bonds was incidental to and based upon the pretended contract aforesaid dated Oct. 9, 1889, and so voted by such directors in their own interest as aforesaid, and each and every of such subscriptions of the defendants were so made with full knowledge of the said pretended contract, and were executed prior to the actual illegal and unauthorized placing by the then officers of your orator of the pretended guarantee of your orator upon any of said bonds, and also long prior to the actual delivery of any of said bonds or guarantees therein to the said defendants, and your orator will to the court insist that each and every of the said defendants became interested in and contracted for the future delivery of such bonds and pretended guarantee, charged with full notice of the existence and nature of such paper-writing of October 9, 1889, and of the limited powers and authority of such directors of your orator, and of the fact that said directors were acting in their own interest, and contrary to their fiduciary duties in voting the guarantee of your orator to be placed on bonds of another company which they had arranged they would individually thereafter purchase at a discount and that none of the defendants hereto are *bona fide* holders of such pretended guarantees of your orator for value or in the usual course of business.

7. Thereafter the defendant Dowd, being then the presi-
7 dent of your orator, illegally, and without right or power so to do caused to be placed upon each of the 585 of the bonds of the said Beattyville Company an endorsement in the words and figures set forth and recited in the paper-writing of October 9, 1889, and attached his signature as president, and caused the corporate seal of your orator to be affixed thereto, and the same to be attested by the secretary of your orator, and thereafter the defendant Dowd, on March 11, 1890, being the day before the annual meeting of your orator's stockholders, when he and his associate directors well knew that they would on the succeeding day cease to be such directors, or to have any official power to execute any further guarantee, again proceeded to place a pretended guarantee of the same kind upon 600 other mortgage bonds of said Beattyville Railroad Company and the said Dowd thereupon delivered all and singular the said $1,185,000 mortgage bonds and the pretended guarantees of your orator thereon to the said Richards as president of the said improvement company, and illegally and without authority the said Dowd assumed as president and in behalf of your orator to receive from the said improvement company two certificates of capital stock in the said Beattyville railroad, being numbered 14 and 16 purporting to recite that your orator was entitled to 8,887½ shares of such capital stock, amounting to $888,750, face value. As your orator is advised and believes, and so charges, some of such railroad bonds bearing such pretended guarantees, have been paid for by and delivered to the several defendants in part performance of their aforesaid contract of subscription, and are still held by them, and some portion of the said bonds are in the present custody of the defendants, The Louisville Trust Company and The Bank of North America, unpaid for by such subscribers, and undelivered to them, but waiting future payment in accordance with the terms of the bond subscription aforesaid.

Your orator shows that there is now and has been ever since 1883, a public law enacted by the legislature of Indiana, which is obligatory upon your orator and its officers and shareholders, which statute expressly provides that no railroad corporation of such State shall have any power to endorse or guarantee the bonds of any railroad company of another State, except upon the petition of the holders of a majority in amount of all the stock of such guaranteeing corporation; and that such corporation shall not make any guarantee or endorsement to any amount in excess of one-
8 half of the capital stock of the corporation so guaranteeing. Such law prescribes and limits the power of your orator and its officers with reference to any contract of guaranty or endorsement and all of the defendants were bound to take notice of the said public law, and the nature, extent and limitation of power for your orator to enter into any contract of guaranty, or for its officers to bind it by executing contracts.

Notwithstanding the existence and prohibition of such law the former officers of your orator adopted and executed the said paper-writing and placed such pretended endorsement and guaranty upon $1,185,000 of said Beattyville bonds in open and deliberate viola-

tion of such statute, and without any petition, authority, vote or ratification of or from the holders of a majority in amount of the capital stock of your orator, and in fact without any petition, authority or power from any stockholders whatever, and without giving such stockholders any opportunity to consider or act upon such paper-writing or proposed endorsement before they were executed and delivered; all of which facts the defendants well knew when they made their subscriptions, or received such bonds and endorsements.

Your orator further shows that prior to the execution of such paper-writing and bond endorsement your orator had executed a contract with the Louisville Southern Railroad Company, dated December 10th, 1889, wherein and whereby your orator leased the said railroad, and guaranteed during such lease the bonds of said Louisville Southern Company to the amount of $2,500,000, being the full half of the capital stock of your orator, and thereby under the said law your orator was expressly prohibited from any further or additional endorsement of any bonds of any corporation in Kentucky, and had no corporate power or capacity to make any contract to endorse the bonds of said Beattyville Company, or to place any valid guarantees upon such securities, or any of them, of all which facts the defendants had notice.

Your orator further shows that at the regular annual meeting of its stockholders called and held on March 12, 1890, and adjourned until March 22nd, 1890, the same being the first meeting of stockholders which convened after making the pretended contract with the said improvement company. Such matter was reported to the meeting and such stockholders by vote of over 32,000 shares adopted a resolution refusing to approve or authorize such reported contract of guaranty with such improvement company, but expressly rejected the same, and declared that your orator was not in
9 any way bound by such pretended coi tract, or the endorsements placed in persuance thereof on the several bonds of the said Beattyville railroad.

Your orator therefore submits that the said paper-writing dated Oct. 9, 1889, and purporting to bind it to place its written and sealed guaranty for principal and interest on all or any of the bonds of said Beattyville Company and the actual written and sealed endorsements placed on the $1,185,000 of such bonds, were contracts and agreements made by certain of your orator's directors, defendants hereto, without lawful authority and were constructively fraudulent by reason of the personal interest contracted for and acquired by such trustees, were contrary to the prohibition of the statutes of Indiana, and *ultra vires*, and without any corporate authority, and were wholly void, of all of which matters the said defendants had full notice.

The said Beattyville railroad is in an entirely incomplete condition. Only a portion of the grading is done. Some is scarcely begun. A large part of the expensive iron bridges is unfinished. Some of such work is not even contracted for. Only seven miles of rail have been laid. The whole road in its present condition is not

worth anything near the $1,185,000 bonds already issued and is an utterly inadequate security for that sum. No part of the said — is being operated, so that no income can possibly be realized from the use or working of the mortgaged property out of which the semi-annual interest presently falling due on any of such bonds can be paid.

Your orator has caused due notice to be given the said improvement company of the action and vote of its shareholders as aforesaid, rejecting the said pretended contract and declaring the invalidity thereof, and demanding the cancellation and return of the same and of all and singular the unauthorized and void endorsements of your orator upon the said $1,185,000 bonds of the said Beattyville Company, but the said improvement company and the said defendants have hitherto wholly failed, neglected, and refused to comply with such demand or to return or cancel the said paper-writing, or any of the endorsements upon said bonds, and your orator verily believes and charges that it is the intention of the said improvement company from time to time to call upon the defendants who are subscribers to the syndicate which has contracted to buy such bonds to pay the sums due according to subscription, and that thereupon the said Bank of North America and the Louisville Trust Company, who are the present custodians of a large amount of such securities, will proceed to receive such payments and deliver such bonds bearing what purports to be the endorsement of your orator and that thereupon the defendants Dowd, Carson, Hitt, Fetter, Roosevelt, Erhardt, and Cook, and their other associates in such bond purchase, who were not directors, will proceed to sell, transfer and dispose of some or all of the railroad bonds bearing such pretended endorsement of your orator, to other persons and corporations to your orator unknown and not easy ascertainable, who will not have like clear and full notice of the invalidity, illegality, and constructed fraud aforesaid, which affects such endorsement in the hands of the defendants and which transferees and assigns will thereupon claim to be purchasers without notice of any such matters, and when the said Beattyville Company defaults upon the coupons as they fall due, which default as your orator believes and charges will certainly occur, the said third parties who may have then become the holders of such railroad bonds bearing such endorsement thereupon will claim that your orator is lawfully bounden for such interest, and will endeavor to enforce the payment of such coupons by reason of such illegal guaranty and will subject your orator to a multiplicity of suits in divers courts and to greatly enhanced costs and expense to assert and defend its lawful rights, and will thereby inflict upon it great and irreparable loss and damage.

Your orator claims and will insist that the said paper-writing dated Oct. 9, 1889, and each of the 1,185 pretended signed and sealed endorsements in the name of your orator upon the said railroad bonds are illegal, fraudulent, and void documents, which, upon their face, may purport to bind your orator, but are in fact no lawful obligation whatever and that none of the defendants have any right to

hold, dispose of or transfer, such pretended obligations of your orator, but that each and every of the defendants should be perpetually enjoined from claiming or enforcing any liability by reason thereof against your orator, or from enforcing or attempting to enforce in any court any liability by reason thereof against your orator or its property. Your orator has tendered back to said improvement company all the shares of stock of said Beattyville Railroad Company wrongfully "received" by your orator's former officers from it, which tender has been refused and complainant has such stock in its custody ready and willing to return the same.

Forasmuch as your orator has for such grievances no adequate remedy at law, but can only obtain relief in equity, it brings this suit, and the premises considered, prays that the defendants
11 hereto be duly summoned to appear herein and answer the bill of your orator, but not under oath and be compelled to stand to and abide by such orders and decrees as the court may from time to time enter in this cause; that on final hearing the court will decree the said paper-writing dated Oct. 9th, 1889, and purporting to bind your orator to endorse all of the first-mortgage bonds of said Beattyville Railroad Company, and each of the 1,185 pretended endorsements so as aforesaid actually placed on such bonds to be illegal *ultra vires*, constructively fraudulent and wholly void and that the same and every thereof shall be delivered up to be cancelled and forever destroyed and each and every of the defendants perpetually enjoined from claiming any rights thereunder; that pending the entry of such final decree, this being an emergency, the court will forthwith enjoin and restrain each and every of the defendants from selling, transferring, pledging or encumbering in any way or parting with the possession of any of the said railroad bonds bearing thereon such pretended endorsement of your orator, and enjoined from bringing any suit thereon, until such time as the court may order each and all of such bonds having such endorsement to be deposited in the registry of the court to await the enrollment of a final decree cancelling all such illegal and void endorsements by your orator and that the court will grant such other and further relief as may seem just and necessary to fully establish and protect the equities of your orator.

LOUISVILLE, NEW ALBANY & CHICAGO RAILWAY COMPANY.

HENRY CRAWFORD,
HELM & BRUCE, *Solicitors.*

UNITED STATES OF AMERICA, }
District of Kentucky. }

William L. Breyfogle on oath says: He is the president of the Louisville, New Albany & Chicago Railway Company, that he had read the foregoing bill and knows the contents thereof and that the matters therein set forth are true as he verily believes.

WM. L. BREYFOGLE.

Subscribed and sworn to before me this April 9, 1890.

SAM'L B. CRAIL,
Clerk U. S. Cir. Court, Ky. Dist.,
By HENRY F. CASSIN, *D. C.*

12 The Exhibit "A," referred to in the foregoing bill of complaint, is in the words and figures as follows, to wit:

Agreement Between the Richmond, Nicholasville, Irvine & Beattyville Railroad Company and the Ohio Valley Improvement & Contract Company.

This agreement made the 11th day of October, 1888, by and between the Richmond, Nicholasville, Irvine & Beattyville Railroad Company, of the first part, and the Ohio Valley Improvement & Contract Company of the second part, witnesseth:

That whereas the first party is authorized by its charter to locate, construct, equip and operate a railroad from a point in Woodford county, Kentucky, to a point on the Kentucky river at or near Beattyville, and to that end is authorized and empowered to issue its bonds secured by a mortgage upon its property and franchises to the amount of twenty-five thousand dollars ($25,000) per mile, and is authorized and empowered to issue its capital stock for a like amount and the counties along the line, being so authorized have subscribed for five hundred and fifty thousand dollars ($550,000) of said stock and agreed to issue their bonds therefor and the county of Woodford having agreed to deliver to the Woodford Railroad Company five thousand dollars ($5,000) in county bonds when said company has caused a train of cars to be run from Versailles across Woodford county to a point on the Jessamine County line and the Woodford Railroad Company has agreed to assign said five thousand dollars ($5,000) of bonds to the first party on certain conditions and the said first party being authorized to contract with any person or corporation for the construction and equipment of said road, and to make payment therefor in the bonds, capital stock and other securities of the company; and

Whereas the contract company is authorized by its charter to contract for such construction and equipment and to receive in payment therefor the securities of said railroad company; and

Whereas it is agreed that the contract company shall undertake the work of locating, constructing and equipping said railroad;

Now in consideration of the premises and of the natural covenants hereinafter indicated, to wit:

First. Said railroad shall be constructed from a point at or near Versailles, Kentucky, by way of Nicholasville, Richmond and
13 Irvine to a point within one-half mile of Beattyville or Proctor in Lee county; or from Richmond to its Lee County terminus by the most practicable route.

Second. Said road shall be a single-track railroad with such turnouts and sidings as may be necessary in the judgment of the engi-

neer of the railroad company, not exceeding nine miles in the aggregate. The grades of the road shall not exceed ninety feet to the mile, or such other grade as may be agreed on by the parties hereto, nor shall the curves be greater than ten-degrees curves. Fills shall not be less than fourteen feet wide on the top, and shall have a slope from the base of not less than one and a half to one. The cuts shall not be less than fourteen feet in width at the bottom and the slopes not less than one-fifth to one in rock and one-half to one in earth. The road shall be laid with steel rails weighing not less than fifty-six pounds to the lineal yard and upon cross-ties not less in number than twenty-six hundred and forty to the mile, to be made of oak or of other timber approved by the engineer of the railroad company. The tunnels, if any be necessary, shall have a section of not less than nine cubic yards per lineal foot, and if necessary in the opinion of the engineer of the railroad company shall be suitably lined with timber. The construction company shall procure and cause to be conveyed to the railroad company the necessary right of way and grounds for stations or depot buildings, shall make all proper surveys and provide all necessary engineering and superintending and inspection of the work during its construction, and shall furnish the material for and construct all the necessary stone culverts, pipe drains, bridge and trestle masonry, bridge superstructure and trestles, cattle-guards and road crossings, and the entire work of construction, embracing material, workmanship and erection, shall be made under the direction and according to the plans and specifications, which shall be fixed by the chief engineer of the railroad company.

The contract company shall furnish all track material and lay the tracks, switches, turnouts, sidings, with the required number of cattle-guards and road crossings as detailed in the specifications, and shall ballast the track as may be required by the chief engineer of the railroad company. The contract company shall furnish the material for and construct two substantial well-built turn-tables fifty-four feet long with stone or brick pits, to be approved by the chief engineer of the railroad company, and at such points as he may designate. The contract company shall furnish the ma-
14 terial for and construct ready for use six water stations on the line of the road, of capacity not less than thirty thousand gallons each, with suitable power and wells or pools sufficient to maintain a sufficient supply of water and three fuel sheds and platforms to be located and constructed to the approval of the chief engineer of the railroad company.

The contract company shall furnish the material for and construct not less than twelve station buildings at such points as the railroad company may select and of such size and plan as may be designated by the chief engineer of the railroad company at an average cost of not more than one thousand dollars each.

The contract company shall also secure and cause to be conveyed to the railroad company sufficient land near the depot at the Lee County terminus for yard purposes and shall furnish the material for and erect a round-house and repair shop thereon in accordance

with the plans to be furnished by the chief engineer of the railroad company, the cost of the land and improvements not to exceed $2,500,000.

Third. The contract Co. further agrees that until said work of construction above provided for shall have been completed, it will pay to said railroad Co. or for its account, such sums as may be necessary to pay all the salaries of its officers and to maintain its organization not exceeding in the aggregate $10,000 per annum. The contract company also agrees to assume and pay the debts of the railroad company existing at this date not to exceed $25,000.00.

Paragraph II. In payment for the work thus to be done and the expenditures to be made the railroad company agrees to assign and deliver to the contract company the following-named securities, to wit:

First. Of the Woodford County bonds five thousand dollars ($5,000.00); of the Madison County bonds, two hundred and fifty thousand dollars ($250,000.00); of the Estill County bonds, one hundred thousand dollars ($100,000.00); of the Lee County bonds, fifty thousand dollars ($50,000.00). The bonds of each of said counties to be turned over by the railroad company and received by the contract company when the railroad company becomes entitled to the same according to the terms and conditions under which the said counties made their respective subscriptions;

Second. Also, for each lineal mile of said road twenty-five thousand dollars ($25,000.00) of the negotiable coupon bonds of the railroad company bearing six per cent. interest secured by a mortgage or deed of trust, constituting a first lien upon its franchises and upon said line of railroad from its Woodford County terminus to its Lee County terminus, as above described, including the right of way, road-bed, cross-ties, track, sidings, switches, depots, water tanks, round-houses and its real estate and equipment of every description whatsoever, and upon all such property of the railroad company hereafter acquired excepting its branches.

Third. Also the subscriptions for the capital stock of the railroad company heretofore made by individuals amounting to — dollars, transferring to the contract company the right to collect the amounts remaining unpaid upon said subscriptions; and if said subscribers should direct that their certificates should be issued to and in the name of the contract company, the railroad company is to comply therewith.

Fourth. Also, for each lineal mile of said road twenty-five thousand dollars ($25,000.00) of the paid-up capital stock of the railroad company after deducting the stock issued on the individual subscriptions mentioned in the next preceding clause and the five thousand five hundred and fifty shares subscribed for by the counties aforesaid.

Fifth. Also, all donations to and subscriptions for the capital stock of said railroad company hereafter made; and the railroad company is to execute the necessary papers for the transfer of such donations and subscriptions so as to vest the title in the name of the contract company.

Paragraph III. Payments for the work and expenditures above provided for shall be made in monthly installments, if called for by the contract company, and shall be for such proportion of the total contract price as the money expended, work done and material furnished or contracted for (when necessary to make payments therefor in advance of actual delivery) under this contract shall bear the total estimated expenditures and costs of the railroad and equipment when completed according to the terms of this contract, as the same may be fixed by the engineer of the railroad company.

Paragraph IV. As soon hereafter as practicable the railroad company shall as security for the performance of this contract issue twenty-five thousand dollars (25,000.00) of its first-mortgage bonds for each mile of its road to be constructed, and a like amount of its capital stock and make a deposit of the same, less the five thousand five hundred and fifty shares of stock subscribed for by the
16 aforesaid counties with the Louisville Safety Vault and Trust Company or such other persons as may be hereafter agreed upon as trustees pursuant to this agreement.

Paragraph V. In order to ascertain from time to time the amount of money coming due to the contract company under its agreement, it shall be the duty of the engineer in charge from month to month or when called upon, not oftener than once a month to certify in writing to the parties hereto what proportion the work done, material furnished or contracted for and money expended by the contract company under this agreement bears to the total expenditures and costs of the railroad and equipment when completed according to this contract as same may be estimated by said engineer and the amount payable thereof to said contract company; and thereupon the amount so certified shall become immediately payable by the railroad to the contract company. In the event of a change of engineers during the progress of the work the appointment of a new engineer shall be made by agreement between the parties hereto.

Paragraph VI. As the several installments of money shall become due to the contract company under this agreement as above provided, it shall be the duty of the railroad company to pay same in money or to give to the trustee an order for a delivery, to the contract company or its order, of the securities deposited with it as above provided equal in amount at their par value to the amount of such installment as fixed by the certificate of the engineer.

If the railroad company should pay any such installment in money, it may, upon depositing with the trustee the receipt of the contract company therefor, withdraw from the hands of the trustee an equal amount at par of the bonds and capital stock of the railroad company, such withdrawal to be in equal portions of each. If payments be made in securities instead of money, the contract company shall be entitled to receive *pro rata* payments in the stock and bonds of the railroad company after deducting the amounts paid in county bonds as provided in clause first of paragraph II of this contract.

The certificate of the engineer as above provided for approved by the president of the railroad company and with a direction from the latter to deliver securities to the amount called for by said certificate, shall be a sufficient authority to the trustee to make deliveries accordingly without further inquiry.

If the board of directors of the railroad company shall at any time by a resolution direct the trustee to deliver to the contract
17 company or its order any amount of the bonds or capital stock although in excess of the bonds above provided for the trustee shall make delivery accordingly.

A certified copy of such resolution attested by the president and secretary of the railroad company with the seal of the corporation attached shall be sufficient authority to the trustee to make delivery.

If the contract company shall negotiate a sale of the bonds and securities above mentioned or shall negotiate a loan on the faith thereof, which sale or loan shall be consented to by the railroad company then the railroad company will provide for a delivery of the securities under proper provisions and to such extent as may be necessary to enable the contract company to pay the amounts expended or incurred by it in the performance of this contract.

Paragraph VII. For the security of the trustee before any deliveries of stock or bonds shall be made by him, the parties hereto shall file with said trustee a statement giving the name of the engineer in charge of the work of construction, the names of the president and secretary of the railroad company and the names of the president, secretary and treasurer of the contract company and of any changes which may be made in either of these offices, notice in writing shall be given to the trustee by the parties hereto.

Paragraph VIII. If subcontractors be employed by the contract company to furnish material or to perform work herein provided for, it may assign to such subcontractors the right to receive any part of the money bonds or capital stock to which the contract company will become entitled by it subject to the conditions herein prescribed with relation to payments of money stock or bonds to said contract company.

Paragraph IX. The trustee shall receive for his services a compensation to be agreed upon between him and the parties hereto, the same to be paid by the contract company.

Paragraph X. The railroad company agrees that it will lend its assistance towards obtaining donations and further subscriptions to its securities as the opportunities may arise and transfer the same to the contract company, as provided in clause fifth of paragraph II of this agreement.

Paragraph XI. The Richmond, Nicholasville, Irvine & Beattyville Railroad Company and the Louisville Southern Railroad Company having entered into an agreement under which the
18 latter company under certain conditions is to take charge and maintain the road of the former and pay therefor 40 per cent. of the gross earnings; now the contract company agrees that if the said 40 per cent. is not sufficient to keep up the organi-

zation of the first party and pay the interest upon its first-mortgage bonds, then it, the contract company will pay said deficit during the construction of the road and for the first two semi-annual installments of interest maturing after its completion.

Wherever the word "engineer" is used in this agreement the chief engineer of the railroad company for the time being is meant.

Paragraph XII. Each party hereto agrees to make, execute and deliver any other or further assignments, transfers, certificates or other papers necessary or convenient to carry this agreement into full effect.

In witness whereof the Richmond, Nicholasville, Irvine & Beattyville Railroad Company has caused its corporate seal to be affixed and its corporate name to be signed hereto by its president, J. W. Stine; and the Ohio Valley Improvement and Contract Company has caused its corporate seal to be affixed and its corporate name to be signed hereto by its president.

RICHMOND, NICHOLASVILLE, IRVINE & BEATTYVILLE R. R. CO.,
By J. W. STINE, *Pres't.*
OHIO VALLEY IMPROVEMENT & CONTRACT COMPANY,
By A. E. RICHARDS, *Pres't.*

[R. R. Seal.] [Contract Co. Seal.]

Exhibit "B" also referred to in the bill of complaint herein is as follows:

Proposition.

The Ohio Valley Improvement and Contract Company, a corporation chartered by the legislature of Kentucky, is building the Richmond, Nicholasville, Irvine and Beattyville railroad. This road, which is about 90 miles long, is to be bonded for $25,000 per mile and stocked for a like amount. Five hundred and fifty-five thousand dollars of the stock is to go to the counties. The remainder of the stock and all the bonds are to be paid to the Ohio Valley Improvement and Contract Company for building the road. These securities are to be turned over to the construction company,
19 as the work progresses, in payment for a proportionate amount of work actually done, upon the certificate of the chief engineer of the railroad company. The construction was begun March 1st, 1889, and the contract company will have earned its first $500,000 in bonds about August.

This company proposes to sell one-half of the whole issue of bonds at 90 cts. on the dollar and accrued interest and to give to the purchasers as a bonus 51 per cent. of the entire issue of railroad stock. As each $500,000 of the bonds (up to $2,000,000) are earned by the contract company, the purchasers are to take and pay for one-half of the same and receive a proportionate amount of the 51 per cent. of stock. One-half of whatever amount there is earned in excess of the two million dollars of bonds, is to be taken and paid for upon the same terms when the road is completed.

The contract company, in consideration of said sale of bonds, obligates itself to build according to their existing contract, a first-class modern railroad in every particular; with proper sidings and outings, to lay the track with 60-lb. steel rails on 2,800 ties to the mile; to equip the road with four passenger, six freight and two switch engines, 400 coal cars, 75 box cars, 75 stock cars, 25 flat cars, two first-class and two second-class passenger cars, and two combination cars; and to make the bridges over the Kentucky river, Hickman creek, Marble creek, Miller's creek and Neal's branch, of iron. The whole property, including the right of way, depot grounds, road-bed and equipment, is to be turned over to the railroad company fully paid for and free of all liens, except that of the mortgage bonds.

If the net earnings of the railroad are not sufficient to pay the interest on the mortgage bonds, the contract company will pay the deficit during the construction of the road and for the first two semi-annual installments of interest maturing after its completion, and will deposit a sufficient amount of its securities, out of its last earnings, to guarantee the same.

June 19th, 1889.

OHIO VALLEY IMPROVEMENT & CONTRACT CO.,
By A. E. RICHARDS, *Pres't.*

NEW YORK, *June 19th*, 1889.

We, the undersigned, agree to accept said proposition and to purchase the amount of said bonds set opposite our respective
20 names, upon the terms therein set forth, provided a committee appointed by us to examine into the affairs of the company, the work of construction, etc., reports everything to be as represented by its president.

ELIHU ROOT, One hundred thousand.

Exhibit "C" referred to is as follows:

This agreement, made between the Ohio Valley Improvement and Contract Company, a corporation organized and existing under the laws of the State of Kentucky, party of the first part, and the Louisville, New Albany and Chicago Railway Company, a corporation organized and existing under the laws of the States of Indiana and Kentucky, and hereinafter called the New Albany Company, party of the second part. Witnesseth:

First. The said construction company is engaged under a contract with the Richmond, Nicholasville, Irvine & Beattyville Railroad Company, a corporation organized under the laws of the State of Kentucky, hereinafter called the Beattyville Company, in building the railroad of the said Beattyville Company.

The said railroad extends from a point at or near Versailles in Woodford county to Beattyville in Lee county and is about 90 miles in length.

The capital stock of said Beattyville Company amounts to $25,000

per mile of said railroad, and first-mortgage bonds are to be issued by said Beattyville Company secured by mortgage upon the said railroad to the amount of $25,000 per mile. $555,000 of the said capital stock is to be issued or transferred to the counties along the lines of the road; the remainder of the stock and all the bonds are to be paid to the said construction company for building the road.

These securities are to be turned over to the construction company as the work progresses in payment for proportionate amounts of work actually done upon the certificate of the chief engineer of the said Beattyville Company.

A copy of the said construction contract is hereto annexed marked "A," and is hereby made a part of this agreement.

Second. All the bonds and certificates of stock required by the fourth paragraph of the said construction contract to be de-
21 posited with the Louisville Safety Vault & Trust Company have been so deposited in pursuance of the said paragraph.

Third. The said construction company hereby agrees to and with the said New Albany Company that in consideration of one dollar to it in hand paid and the covenants and agreements hereinafter contained, it will proceed to complete the said railroad from Versailles to Beattyville in accordance with the said construction contract, making it a first-class modern railway in every particular, with proper sidings and outings, to lay the track with sixty-pound steel rails on twenty-eight hundred ties to the mile, to equip the said road with four passenger, six freight and two switch engines, four hundred coal cars, one hundred box cars, twenty-five stock cars, fifty flat cars, two first-class and two second-class passenger cars and two combination cars, and to make the bridges over the Kentucky river, Hickman creek, Marble creek, Miller's creek and Neal's branch, of iron, and to turn over the whole property, including the right of way, depot grounds, road-bed and equipment to the said Beattyville Company fully paid for and free of all liens except that of the mortgage bonds.

Fourth. The said New Albany Company agrees to and with the said construction company that it will, from time to time, as the said first-mortgage bonds are earned by and delivered to the said construction company pursuant to the terms of their said construction contract, guarantee the payment by the said Beattyville Company of the principal and interest of the said bonds in manner and form following, that is to say, by endorsing upon each of said bonds a contract of guaranty as follows:

"For value received the Louisville, New Albany & Chicago Railway Company hereby guarantees to the holder of the within bond the payment by the obligor thereon, of the principal and interest thereof in accordance with the tenor thereof.

In witness whereof the said railway company has caused its corporate name to be signed hereto by its president and its seal to be attached by its secretary."

Fifth. The evidence that the delivery of said bonds is in pursu-

ance of the terms of the said construction contract, that the said construction company are accordingly entitled to require such guaranty to be endorsed thereon, shall be the certificates of the chief engineer of the said New Albany Company.

Sixth. In consideration of the premises, the said construction company agrees to transfer and deliver to the said New Albany Company three-fourths of the entire capital stock of the said Beattyville Company, the said delivery to proceed *pari passu* with the guaranteeing of the said bonds by the said New Albany Company: $3,000 at par of the said stock being delivered for each four thousand dollars of bonds guaranteed.

22

Seventh. The said construction company further agrees that if the net earnings of the said railroad are not sufficient to pay the interest on the mortgage bonds, the said construction company will pay the deficit during the construction of the railroad and for the first two semi-annual installments of interest maturing after its completion and will deposit a sufficient amount of its securities out of its last earnings under the said construction contract to secure such payment.

In witness whereof, the parties hereto have caused their corporate names to be subscribed by their respective presidents, and their corporate seals to be attached by their secretaries.

OHIO VALLEY IMPROVEMENT & CONSTRUCTION CO.,
Attest: By A. E. RICHARDS, *Pres't.*
[SEAL.] WM. CORNWALL, JR., *Sec'y.*
LOUISVILLE, NEW ALBANY & CHICAGO RAILWAY COMPANY,
Attest: By WM. DOWD, *President.*
[SEAL.] JOHN A. HILTON, *Ass't Sec'y.*

STATE OF NEW YORK, }
City and County of New York, } *ss:*

I, Charles Nettleton, a commissioner of the State of Kentucky, in and for the State of New York, residing in said city of New York, do hereby certify that this instrument of writing from Louisville, New Albany & Chicago Railway Company, was this day produced to me in said city, county and State of New York, by William Dowd and John A. Hilton, president and ass't secretary of the said Louisville, New Albany and Chicago Railway Co., — by William Dowd as president, and John A. Hilton, as ass't secretary, to be its act and deed.

In witness whereof I have hereunto set my hand and affixed my official seal this 9th day of October, A. D. 1889.

[SEAL.] CHARLES NETTLETON,
Commissioner for Kentucky in New York,
115 & 117 *Broadway, N. Y. City.*

23 STATE OF KENTUCKY, }
Jefferson County. }

I, W. W. Hill, a notary public in and for the county of Jefferson, State of Kentucky, do hereby certify that this instrument of writing from the Ohio Valley Improvement & Contract Company was this day produced to me in said county and State by A. E. Richards, president, and Wm. Cornwall, Jr., secretary of the said Ohio Valley Improvement & Contract Company and was acknowledged by the said Ohio Valley Improvement & Contract Company by A. E. Richards as president and Wm. Cornwall, Jr., as secretary, to be its act and deed.

In witness whereof, I have hereunto set my hand and affixed my official seal this sixteenth day of October, A. D. 1889.

[SEAL.] W. W. HILL,
Notary Public, Jefferson County, Ky.

Extract from Minutes of the Meeting of the Board of Directors of the Ohio Valley Improvement & Contract Company Held October 14th, 1889.

The president laid before the board a contract between the Louisville, New Albany & Chicago R'y Co., and the Ohio Valley Improvement & Contract Company by which the former company agrees to guarantee the principal and interest of the bonds of the Richmond, Nicholasville, Irvine & Beattyville Railroad Company in consideration of the transfer of seventy-five (75) per cent. of the stock of the latter railroad company, which contract was signed, acknowledged and delivered by the Louisville, New Albany & Chicago R'y Co., on October 9th, 1889. Thereupon on motion of Theodore Harris, seconded by Mr. Dennis Long, it was—

Resolved That said contract be approved and ratified and that the president be directed to sign this company's name to the same and the secretary to attest and attach the corporate seal, and that said officers be further directed to acknowledge and deliver said contract as the act and deed of this company, and that the same be spread in full in the minutes of this meeting, which contract is in words and figures as follows:

A true copy.

[SEAL.] WM. CORNWALL, JR., *Sec'y.*

24 Exhibit "D" referred to in the bill of complaint is as follows:

List of Subscribers to Beattyville Bonds.

George M. Pullman	$100,000
John B. Carson	100,000
J. M. Fetter	100,000
R. R. Hitt	100,000
Elihu Root	100,000

C. H. White & Co.	$79,000
E. H. Wales & Co.	320,000
Wm. Dowd	70,000
D. H. Houghtaling	25,000
James Roosevelt	20,000
J. S. Brice	10,000
Carroll Bryce	6,000
D. G. Rollins	10,000
Joel B. Erhardt	20,000
H. H. Cook	25,000
Walter Howe	10,000
W. B. Leonard	10,000
	$1,125,000

And on the 9th day of April, 1890, came the complainants by Henry Crawford & Helm & Bruce its counsel and on its motion, it is ordered that the defendants, The Ohio Valley Improvement & Contract Company, The Richmond, Nicholasville, Irvine & Beattyville Railway Company, Louisville Safety Vault & Trust Company, Louisville Trust Company, Adolphus E. Richards, William Cornwall, Jr., James M. Fetter, Wm. Dowd, Elihu Root, Joel B. Erhardt, Henry H. Cook, Daniel G. Rollins, David H. Houghtaling, James Roosevelt, James S. Brice, Carroll Bryce, Walter Howe, William B. Leonard, & C. H. White & J. D. White, copartners as C. H. White & Co.; Salem H. Wales, Edward H. Wales, W. L. Stow, Geo. B. Parsons, W. G. Reed, The Bank of North America of New York, John B. Carson, Rob't H. Hitt & George M. Pullman, and every of them are restrained from in any way parting with the possession of any of the bonds or coupons of the Richmond, Nicholasville, Irvine & Beattyville Railway Company, having on them the endorsement — the Louisville, New Albany & Chicago Railway Company, and also restrained from sending said bonds and coupons or any of them out of the jurisdiction or in any way encumbering the same or changing the existing status until the further order of the court herein to be made upon a motion for an injunction on the 21st day of April, 1890, at Nashville, Tenn.

Upon which there issued the following restraining order:

Circuit Court of the United States, District of Kentucky.

LOUISVILLE, NEW ALBANY & CHICAGO RAILROAD CO.
vs.
OHIO VALLEY IMPROVEMENT & CONTRACT CO. *et al.*

WEDNESDAY, *April 9th*, 1890.

This day came the complainant by Henry Crawford and Helm & Bruce, its counsel, and on its motion, it is ordered that the defendants, The Ohio Valley Improvement and Contract Company; The Richmond, Nicholasville, Irvine & Beattyville Railway Company; The Louisville Safety Vault & Trust Company; The Louisville

Trust Company; Adolphus E. Richards; William Cornwall, Jr.; James M. Fetter; William Dowd; Elihu Root; Joel B. Erhardt; Henry H. Cook; Daniel G. Rollins; David H. Houghtaling; James Roosevelt; James S. Brice; Carroll Bryce; Walter Howe; William B. Leonard; C. H. White & J. D. White, copartners as C. H. White & Co.; Salem H. Wales, Edward H. Wales, W. L. Stow, George B. Parsons and W. G. Reed, copartners as E. H. Wales & Co.; The Bank of North America; John B. Carson; Robert H. Hitt and George M. Pullman, and every of them are restrained from in any way parting with the possession of any of the bonds or coupons of the Richmond, Nicholasville, Irvine & Beattyville Railway Company, having on them the endorsement of the Louisville, New Albany & Chicago Railway Company, and are also restrained from sending said bonds and coupons or any of them out of the jurisdiction, or in any way encumbering the same or changing the existing status until the further order of the court herein, to be made upon a motion for an injunction to be heard upon notice, on the 21st day of April, 1890, at Nashville, Tenn.

[SEAL.] Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America and the seal of our said circuit court in Louisville, this 11th day of April, 1890.

SAM'L B. CRAIL, *Clerk*,
By HENRY F. CASSIN, *D. C.*

26 And upon which restraining order the marshal made the following return:

Executed April 11" 1890 on the Louisville Safety Vault and Trust Company by delivering to H. V. Loving president of said company a true copy hereof, and on the Louisville Trust Company by delivering to H. V. Loving president of said company a true copy hereof, and on the Richmond, Nicholasville, Irvine & Beattyville Railway Company by delivering to J. W. Stine president of said company a true copy hereof and on J. M. Fetter by delivering to him a true copy hereof.

D. J. BURCHETT, *U. S. M.*,
By C. J. HOWES, *D. M.*

Executed April 12 on William Cornwall, Jr,, by delivering to him a true copy hereof, also on Adolphus E. Richards, by delivering a true copy hereof; also on the Ohio Valley Improvement & Contract Company by delivering to Adolphus E. Richards president of said Co. a true copy hereof.

D. J. BURCHETT, *U. S. M.*,
By C. F. WEAVER, *D. M.*

And on the 23rd day of April, 1890, comes the complainant and moves the court upon notice given to grant a temporary injunction in accordance with the prayer of the bill, and came also the Nicholasville, Irvine & Beattyville Railroad Company, the Louisville Trust Company, the Louisville Safety Vault & Trust Company,

Adolphus E. Richards, William Cornwall, Jr., & James M. Fetter and file their plea to the jurisdiction and thereupon the said motion and said plea came on to be heard and were argued by counsel and taken under advisement by the court with liberty to the defendants to submit briefs within two weeks. The existing restraining order to remain in full force until further order of the court.

And on the 28th day of May, 1890, came the complainant and also such of the defendants as have heretofore appeared and filed their plea to the jurisdiction of the court herein, and the matters of such plea coming on to be heard the court overrules the said plea and refuses to dismiss this cause for want of jurisdiction and thereupon the motion of the complainant upon notice for a temporary injunction in accordance with the prayer of the bill coming on to be heard and the court after hearing argument grants the
27 said motion and orders an injunction to issue pursuant to the prayer of the bill upon the complainant filing bond conditioned according to law in the penal sum of fifty thousand dollars with surety to be approved by the district judge or clerk of this court. It is further ordered that the defendants have until the July rules to plead, answer or demur to the bill herein.

And on the 31st day of May, 1890, there issued the following injunction:

Circuit Court of the United States for the District of Kentucky.

LOUISVILLE, NEW ALBANY & CHICAGO RAILWAY COMPANY
vs.
THE OHIO VALLEY IMPROVEMENT & CONTRACT COMPANY *et al.*

The complainant, having executed bond, as required by the order of the court, in the penal sum of $50,000, conditioned as required by law, and the sureties having been duly approved it is ordered that the defendants, The Ohio Valley Improvement & Contract Company, The Richmond, Nicholasville, Irvine & Beattyville Railway Company, The Louisville Safety Vault & Trust Company and The Louisville Trust Company, Adolphus E. Richards, William Cornwall, Jr., James M. Fetter, William Dowd, Elihu Root, Joel B. Erhardt, Henry H. Cook, Daniel G. Rollings, David H. Houghtaling, James Roosevelt, James S. Brice, Carroll Bryce, Walter Howe, William B. Leonard, C. H. White and J. D. White, partners as C. H. White & Co.; Salem H. Wales and Edward H. Wales, W. L. Stow, George B. Parsons and W. G. Reed, partners as E. H. Wales & Co.; The Bank of North America, John B. Carson, Robert H. Hitt, and George M. Pullman and each and every of them be and they are hereby enjoined and restrained, until the further order of the court, from claiming any rights under the alleged contract of paper-writing dated May 9th, 1889, between the complainant and the defendant, The Ohio Valley Improvement & Contract Company, purporting to bind the complainant to endorse all of the first-mortgage bonds of the Richmond, Nicholasville, Irvine & Beattyville Railway Company, and the said

defendants, and every of them, are enjoined and restrained from selling, transferring, pledging or encumberring in any way or parting with the possession of any of said railroad bonds or coupons bearing thereon such pretended endorsement of the complainant,
The Louisville, New Albany & Chicago Railway Company,
28 and the said defendants and every of them are enjoined and restrained from bringing any suit on said endorsed bonds or any of them, or sending said bonds or any of them out of the jurisdiction of this court.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, and the
[SEAL.] seal of our said circuit court hereto affixed, at the clerk's office of said court, in Louisville, this 31st day of May, A. D. 1890, and in the 114th year of our Independence.

SAM'L B. CRAIL,
C. C. C., K. D.,
By HENRY F. CASSIN,
His Deputy.

Upon which the marshal made the following return: Executed May 31st, 1890, on the Louisville Safety Vault and Trust Company and the Louisville Trust Company by delivering to H. V. Loving, president of said companys, two copies of this injunction, and June 2, 1890, on the Ohio Valley Improvement and Contract Company by delivering to Adolphus E. Richards, president of said company, a true copy hereof, and on the Richmond, Nicholasville, Irvine & Beattyville Railway Company by delivering to J. W. Stine, president of said company, a true copy hereof. And on Adolphus E. Richards, William Cornwall, Jr., and James M. Fetter by delivering to each of them a true copy hereof.

D. J. BURCHETT, *U. S. M.*,
By C. J. HOWES, *D. M.*

29 And at a term of our court held for its February term, 1891, to wit, on the 16th day of February, 1891, came the parties hereto and plaintiff filed a copy of the articles of incorporation of the Louisville, New Albany & Chicago Railway Company dated December 31st, 1872, and also a copy of the articles of consolidation between the Louisville, New Albany & Chicago Railway Company and the Chicago and Indianapolis Air Line Railway Company dated May 5th, 1891, and by agreement it is ordered that said copies be read on the hearing of this action though not certified.

The parties also filed herein a written agreement and also filed the affidavit of —— Hilton referred to in said agreement.

The articles of incorporation above referred to are as follows:

CHAPTER 858.

An act to incorporate the New Albany and Chicago Railway Company.

Be it enacted by the General Assembly of the Commonwealth of Kentucky.

SECTION ONE. That the Louisville, New Albany and Chicago Railway Company, a corporation organized under the laws of the State of Indiana, is hereby constituted a corporation, with power to sue and be sued, contract and be contracted with, to have and use a common seal, with the power incident to corporations, and authority to operate a railroad.

SECTION TWO. That the Louisville, New Albany and Chicago Railway Company is hereby authorized to purchase or lease, for depot purposes in the city of Louisville or county of Jefferson, such real estate as may be deemed by it to be necessary for passenger and freight depots and transfer, machine shops, and for all switches or turnouts necessary to reach the same and it is also authorized to connect with any railroad or bridge now operated or used or which may be hereafter operated or used in said county of Jefferson, and may build any such connecting lines, or lease or operate the same, and for all said purposes shall have the right to condemn all property required for the carrying out of the objects herein named, and may bond the same, and secure the payment of any such bonds by a moatgage of its property, rights and franchises.

SECTION THREE. That said corporation shall have the power and right to condemn all property in the city of Louisville or county of Jefferson, in this State, which may be deemed by it to be necessary for the purposes set out in this act; and that the proceedings for that purpose shall be instituted either in the Jefferson court of common pleas or the Louisville chancery court, and shall be carried on as nearly as may be, as actions at law by ordinary proceedings. Warning orders against non-residents, absent defendants, or unknown owners of property must be published three times in one of the daily newspapers published in said city of Louisville, State of Kentucky, the last publication at least ten days before the trial. The owners of distinct parcels of one contiguous tract may all be included in one proceeding, or any one or more of them holding contiguous tracts may be proceeded against in a separate action. The courts shall make all such rules, orders, and judgments as will secure a fair trial by an impartial jury of said city or country, and shall give precedence upon its docket as soon as the parties are before the court and the issue made up. The jurors shall be sworn truly to ascertain and determine by their verdict the amount of compensation each owner will be entitled to if his land or property described in the petition be condemned. The court in which these proceedings are brought shall have power to assign a day for the trial of the case as soon as the petition is filed. Upon the return of the verdict, the court shall render judgment vesting title to the property described in the proceedings in said corporation, said judg-

ment to take effect upon the payment into court by said corporation of the amount of money named in the verdict within thirty days after the rendition of said judgment; and should said corporation fail to so pay said money within said time, the said proceedings shall be dismissed without prejudice to other and subsequent proceedings.

31 SECTION FOUR. This act shall take effect from and after its passage.

T. J. BUSH,
Pro Tem. Speaker House of Representatives.
JAMES E. CANTRILL,
Speaker of Senate.

Approved April 8th, 1880.

LUKE P. BLACKBURN.

By the governor:
SAM'L B. CHURCHILL,
Secretary of State.

The articles of consolidation referred to in order of the 16th of February, 1891, are as follows:

Articles of Consolidation Between the Louisville, New Albany and Chicago Railway Company and the Chicago and Indianapolis Air Line Railway Company, Dated May 5th, 1881.

This agreement made this fifth day of May, A. D., 1881, between the Louisville, New Albany and Chicago Railway Company, as party of the first part, and the Chicago and Indianapolis Air Line Railway Company, as party of the second part:

Witnesseth: That whereas the party of the first part is a corporation existing under the laws of the State of Indiana with a share capital of $3,000,000 and has constructed, owns and operates a line of railroad extending from the city of New Albany, Floyd county, Indiana, to Michigan City, La Porte county, in the same State, and

Whereas, the said party of the second part is a consolidated corporation, organized and existing under the laws of the States of Indiana and Illinois with a share capital of $2,000,000 and has in process of construction a line of railway extending from the city of Indianapolis, Marion county, Indiana, to a connection with a railroad at or near Glenwood, Cook county, Illinois, so as to secure a connection with and entrance to the city of Chicago, Illinois, and

Whereas, the lines of railroad so described as aforesaid and belonging respectively to said parties of the first and second parts intersect and connect with each other at Bradford, White county, Indiana, so as to allow the free interchange of traffic between each other, and if joined, united and consolidated, would form a line of railroad connected from the cities of New Albany and Indianapolis, Indiana, to the city of Chicago, in the State of Illinois, and

32 Whereas, the union, merger and consolidation of said two lines of railroad appurtenances and franchises so as to form a corporation under one ownership and control, will enable the said

properties to be operated with more efficiency and economy, and with greater benefit to the respective shareholders and to the public, and

Whereas, the said parties hereto have full powers and authority under the laws of the States of Illinois and Indiana to consolidate their stocks and properties, and it is desired to effect such union, merger and consolidation between the said parties of the first and second parts upon such equitable terms and basis as would recognize the rights of the shareholders in said two corporations and equalize the dissimilar values of the two different lines of railroads and properties:

Now, therefore, in consideration of the premises and to effectuate the purpose aforesaid, the said parties of the first and second parts do hereby mutually covenant and agree with each other as follows, viz:

Article 1. The said parties of the first and second parts do hereby subject to the approval of their respective boards of directors and shareholders as hereinafter specified, severally agree to and with each other, to unite, merge and consolidate the said two corporations and all their railroads, properties, stock and franchises of every kind so as to create and form a consolidated corporation, to be called and known as the "Louisville, New Albany and Chicago Railway Company" on the terms and conditions hereinafter specified, that is to say,

Article 2. By this agreement and act of consolidation, when ratified and approved by the respective boards of directors and the shareholders of both parties hereto, the said parties of the first and second parts, convey, transfer to and vest in the consolidated corporation, so created, all and singular the respective lines of railroads, with all their lands, rights of way, leases, leasehold rights, equipments, machinery, contract rights, licenses, stations, moneys, books, papers, records, choses in action, rights, franchises, privileges and immunities and all property of every kind, real, personal or mixed and whether held in possession, reversion or remainder, and wherever situate. And the said parties hereto do agree and declare, that all and singular such railroads, properties and franchises shall from the date of the consummation of this consolidation, thenceforth be held, owned, managed, enjoyed and aliened by the said consolidated corporation hereby created, and to and for its own use, benefit and behoof, to all intents and purposes, as fully and
33 completely as the said respective parties hereto can do or do now own, hold, use, possess, enjoy or control the same, and the parties hereto do respectively covenant and agree each with the other, that they will execute, seal, acknowledge and deliver to such consolidated corporation, any and all such further or other deeds, assignments or writings as may be necessary or proper to carry out the true intent and meaning of this agreement, and by way of further assurance of title to said property, assets and franchises or any of them.

Article 3. The said consolidated corporation hereby created shall be vested with all the rights, privileges, immunities and franchises

which usually pertain to railroad corporations under the laws of the respective States of Illinois and Indiana, wherein the lines of its railroad are situate, and shall also be vested with all and singular the rights, powers, privileges, immunities, capacities and franchises which before the execution of these articles was lawfully possessed or exercised by either of the parties hereto.

Article 4. The capital stock of the consolidated corporation hereby created shall be, until changed by some manner according to law five million dollars ($5,000,000) being the sum total of the existing share capital of the first and second parties hereto and it shall be divided into fifty thousand shares of one hundred dollars per value each, and each holder of the stock in either of the parties hereto shall from the date of the legal consummation of this consolidation be held and considered a shareholder in the consolidated corporation which is created by these presents, in the proportion, to the extent and in the manner in the next article stated.

Article 5. In order to equalize the different values of the respective stocks of the parties of the first and second parts it is agreed, that the stockholders of the party of the first part shall be entitled to receive for their entire interest legal and equitable in the capital stock of the party of the first part, $3,450,000 of the capital stock of the consolidated corporation being 34,500 shares of the par value of one hundred dollars each, deliverable on the surrender of the stock certificates of the said party of the first part now outstanding to be distributed among them in proportion to the stock held by them in the party of the first part and surrendered by them respectively upon the consolidation.

And likewise it is agreed that the stockholders of the party of the second part, or such person or persons as they authorize to receive them shall be entitled to receive for the entire interest
34 of said stockholders, legal and equitable, in the capital stock of the consolidated company, $1,550,000 of the capital stock of said consolidated corporation, being 15,500 shares of the par value of one hundred dollars each, deliverable on the surrender of any and all stock certificates of the party of the second part now outstanding.

The certificates of the shares of the capital stock of the consolidated corporation so created shall be issued to the persons entitled thereto on demand and the surrender by them of the certificates held by them in the capital stock of the parties hereto in the proposition as above recited in this article.

Article 6. It is further distinctly agreed that for the purpose of carrying out the provisions of the pending construction contract whereby the line of railroad of the party of the second part is being built the said consolidated corporation as soon as it comes into being, shall issue its coupons bonds to the amount of two millions three hundred thousand dollars, bearing six per cent. interest payable semi-annually both principal and interest to be payable in gold coin of the United States of the present standard of weight and fineness, and to be secured by a mortgage to some proper trustee, or trustees, which shall be a first lien on the railroad from Indianapolis

to its Chicago terminus, and the equipment and appurtenances thereto belonging.

Of such bonds one million eight hundred and fifty thousand dollars are to be used in payment, under such construction contract and four hundred and fifty thousand dollars of such bonds, for the equipment for said Chicago and Indianapolis division and to the general purposes of said consolidated corporation.

Article 7. The business and affairs of the consolidated corporation hereby created shall be managed by a board of directors to be annually elected according to law on such date, and at such place as may be appointed by the by-laws of the consolidated company, and until the first election the board of directors of the consolidated corporation shall be composed of the present board of directors of the party of the first part.

Article 8. The present by-laws and the present common or corporate seal of the party of the first part shall be until changed according to law, the by-laws and corporate seal of the consolidated corporation hereby created.

Article 9. The principal place of business and the general office of the consolidated corporation shall be established in the city of Louisville, Kentucky, and the books, vouchers, instruments of title, records, cash, evidences of debt, contracts and all papers and
35 documents pertaining to the property or business of either of the parties hereto shall at once be delivered to the proper officer or agent of the consolidated corporation, and the said books, records and papers shall be deemed and taken as far as necessary or desired as the records, and books of said consolidated corporation.

Article 10. These articles of consolidation shall become consummated and go into effect, and the consolidated corporation so created shall come into existence only after the due and legal ratification of these presents by the respective boards of directors and the shareholders of the parties hereto. It is hereby expressly agreed that the above and foregoing instrument is to be submitted as soon as the same can legally and properly be done to the respective boards of directors and the shareholders of the parties hereto, and if thereupon these presents are not ratified the same are to become void and of no effect.

In witness whereof we have hereunto set our hands the day and year first above written.

[Corporate Seal.]

LOUISVILLE, NEW ALBANY & CHICAGO RAILWAY COMPANY,
By R. S. VEACH, *President.*

Attest: W. H. LEWIS, *Sec.*

[Corporate Seal.]

CHICAGO & INDIANAPOLIS AIR LINE RAILWAY COMPANY,
By P. M. KENT, *President.*

Attest: W. A. STARIN, *Sec.*

STATE OF NEW YORK. } ss:
City and County of New York, }

I, Richard S. Veach, do hereby certify that I am the president of the Louisville, New Albany and Chicago Railway Company, and that the articles of consolidation between the above-named corporation and the Chicago and Indianapolis Air Line Railway Company of which the foregoing and annexed paper is a full and true copy were approved by the board of directors of said Louisville, New Albany and Chicago Railway Company on the 7th day of June, 1881, who at a meeting on that day recommended to the stockholders of said last-named company to adopt the said consolidation and at the same time directed the president to call a meeting of the stockholders to be held not less than thirty days after due notice according to the laws of Indiana.

36 And I do further certify that at a meeting of the stockholders of said Louisville, New Albany and Chicago Railway Company duly called and held on the 18th day of July, 1881, the said articles of consolidation were duly approved by the affirmative vote of twenty-two thousand and seventeen shares being all the shares represented at said meeting and constituting more than two-thirds of all the stock of said corporation, and by the resolution and proceedings of said stockholders' meeting the board of directors were authorized to carry out and consummate the said consolidation.

And I do further certify that at a meeting of the directors of the said Louisville, New Albany and Chicago Railway Co. held on the 19th day of July, 1881, the said directors authorized and directed me as president of said last-named company to consummate the said consolidation according to the terms of the said articles of consolidation annexed hereto as aforesaid.

Wherefore I do further certify and declare by virtue of the said approval and ratification of the said articles of consolidation and by virtue of the authority in me vested as aforesaid, the said articles of consolidation of which the said annexed and foregoing paper is a full and true copy has become fully approved and consummated and has gone into full effect and is the true contract of consolidation.

R. S. VEACH.

Subscribed and sworn to before me this sixth day of August, A. D. 1881.

Witness my hand and seal of office.

S. G. LEATHEM,
[SEAL.] *Notary Public, New York Co.*

STATE OF ILLINOIS, } ss:
Cook County, }

I, Phineas M. Kent, do hereby certify that I am president of the Chicago and Indianapolis Air Line Railway Company, and that the within and foregoing articles of consolidation were duly and legally

ratified at a special meeting of the stockholders of said corporation duly called and held at Chicago, Ill., on May 11, 1881, by the affirmative vote of 20,000 shares being all the stock of said corporation.

Witness my hand and the seal of said corporation this 8th day of August, A. D. 1881.

[SEAL.] PHINEAS M. KENT.

Attest: WM. A. STARIN, *Secretary.*

Subscribed and sworn to before me a notary public in and for said State and county, August 8, 1881.

Witness my hand and official seal.

[SEAL.] WM. A. STARIN,
Notary Public.

37 UNITED STATES OF AMERICA, } ss:
State of Illinois, }

OFFICE OF SECRETARY.

I, Henry D. Dement, secretary of state of Illinois, do hereby certify that the foregoing articles of consolidation between the Louisville, New Albany & Chicago Railway Company, and the Chicago and Indianapolis Air Line Railway Company, were filed for record in this office August 10th, A. D. 1881, at 9.15 o'clock a. m., and duly recorded in Book "5" Railroad Incorporations at page 42.

In witness whereof, I hereto set my hand and affix the great seal of State, at the city of Springfield, this 11th day of August, A. D. 1881.

HENRY D. DEMENT,
Secretary of State.

[SEAL.]

Certificate.

STATE OF INDIANA, } ss:
Office of the Secretary of State, }

I, E. R. Hawn, secretary of state of the State of Indiana do hereby certify that the articles of consolidation between the Louisville, New Albany and Chicago Railway Company and the Chicago and Indianapolis Air Line Railway Company were filed in the office of the secretary of state of the State of Indiana on the 10th day of August, A. D. 1881, as appears from date of filing thereon endorsed and now remaining on file in this office, and were also recorded in Railroad Record No. 1 page 215 to 220 inclusive.

In witness whereof, I have hereunto set my hand and affixed the seal of the State of Indiana, at the city of Indianapolis, this 10th day of August, A. D. 1881.

E. R. HAWN,
Secretary of State.

STATE OF ILLINOIS, } ss:
Cook County, }

I, W. H. Lewis, secretary and treasurer of the Louisville, New Albany & Chicago Railway Company, do hereby certify that the above and foregoing is a full, true and correct copy of the original instrument of articles of consolidation between the said Louisville, New Albany & Chicago Railway Company and the Chicago and Indianapolis Air Line Railway Company dated the fifth day of May, 1881, with certificate of the president of the Louisville, New Albany and Chicago Railway Company that the same was approved by
38 the board of directors and stockholders of the last-named company, and with certificate of the president of the Chicago and Indianapolis Air Line Railway Company that the same was approved by the stockholders of said last-named company, and also certificates of the secretary of the State of Indiana and the secretary of the State of Illinois, showing the filing and recording of the same in their respective offices.

Witness my hand and the official seal of the Louisville, New Albany & Chicago Railway Company, hereto, this 21st day of May, A. D. 1894.

[SEAL.] W. H. LEWIS, *Secretary.*

The written agreement referred to is as follows:

UNITED STATES OF AMERICA, }
District of Kentucky. }

United States Circuit Court for the Dist. of Kentucky.

LOUISVILLE, NEW ALBANY & CHICAGO RAILWAY CO., Plaintiffs,
vs.
THE OHIO VALLEY IMPROVEMENT & CONTRACT CO. *et al.*, Defendants.

It is agreed by the parties hereto—

1st. That none of the stockholders of the Louisville, New Albany & Chicago Railway Company ever petitioned the directors of said company to execute the endorsement placed upon the bonds of the Richmond, Nicholasville, Irvine and Beattyville Railroad Company, guaranteeing the payment of the principal and interest of the bonds of said railway company, and that said endorsement was placed on said bonds on the authority of the directors of said company alone, and not by authority of the stockholders of said company or any of them in the manner pointed out by section 3951 A, B, & C of the statutes of Indiana.

2nd. It is further agreed that the affidavits with the exhibits therewith heretofore read by either party on preliminary motion shall be deemed and treated as depositions and competent evidence on the final hearing of this case.

HELM & BRUCE,
For Complainant.
BULLITT & SHEILD,
For Defendant-.

39 And on the 28th day of January, 1893, comes the complainant by its solicitors and on leave of court first had and obtained files its supplemental bill herein duly verified by affidavit making new parties to this cause and praying the issue of a temporary restraining order until such time as a motion for an injunction can be heard upon notice.

It is thereupon ordered that the following parties named in said supplemental bill be made defendants in this cause and that process issue against them to appear herein, viz: Vernon D. Price, Bennett H. Young, John W. Stine, Louisville Trust Company as assignee of Cornwall & Bro., Louisville Trust Company as assignee of William Cornwall, Jr., Thomas W. Bullitt, Theodore Harris, Louisville Banking Company, Dennis Long, Columbia Finance and Trust Company and Bernard Hollman.

And upon the statements in the verified supplemental bill contained and on motion of complainant's solicitors, it is by the court ordered that until further order in the premises the defendants, Vernon D. Price, Bennett H. Young, John W. Stine, Louisville Trust Company and Louisville Trust Company as assignee of William Cornwall, Jr., Louisville Trust Company as assignee of Cornwall & Bro., Thomas W. Bullitt, Theodore Harris, Louisville Banking Company, Dennis Long, Columbia Finance and Trust Company; Columbia Finance and Trust Company, trustee, and Bernard Hollman be and they are hereby enjoined and restrained from selling, transferring, pledging or encumbering in any way or parting with the possession of any of the bonds of the Richmond, Nicholasville, Irvine and Beattyville Railway Company and the coupons thereto belonging purporting to be guaranteed by the complainant, and they are also enjoined from sending any of such bonds or coupons out of the jurisdiction of this court or bringing or further prosecuting any suit against the complainant to recover on any such bonds or coupons.

And upon which order the marshal made the following return:

Executed Jan'y 31, 1893, on Vernon D. Price, Bennett H. Young John W. Stine, Thomas W. Bullitt, Theodore Harris, Dennis Long and Bernard Hollman by delivering to each of them a true copy hereof; and on the Louisville Trust Co. by delivering to H. V. Loving, president of said Co. a true copy hereof; and on the Louisville Trust Co. as assignee of Wm. Cornwall & Bro. by delivering to H. V. Loving, president of said Co. a true copy hereof; and on the Louisville Trust Company as assignee of Wm. Cornwall, Jr., by delivering to H. V. Loving, president of said Co. a true copy hereof;

40 and on the Louisville Banking Co. by delivering to Theodore Harris, president of said Co. a true copy hereof; and on the Columbia Finance and Trust Company by delivering to Attilla Cox, president of said Co., a true copy hereof; and on the Columbia Finance and Trust Co. as trustee, by delivering to Attilla Cox, president of said Co., a true copy hereof.

D. J. BURCHETT, *U. S. M.*,
By C. J. HOWES, *D. M.*

The supplemental bill referred to is as follows:

United States Circuit Court, District of Kentucky.

THE LOUISVILLE, NEW ALBANY & CHICAGO RAILWAY COMPANY
vs.
OHIO VALLEY IMPROVEMENT & CONTRACT COMPANY and Others.
} In Equity.

The Supplemental Bill of the said Louisville, New Albany and Chicago Railway Company.

The complainant by way of supplement shows to the court:

That heretofore to wit, on April 9th, 1890, it filed its original bill in this court against the above-named Ohio Valley Improvement & Contract Company, The Richmond, Nicholasville, Irvine & Beattyville Railroad Company, The Louisville Safety Vault & Trust Company, The Louisville Trust Company, Adolphus E. Richards, William Cornwall, Jr., James M. Fetter and divers other defendants, wherein and whereby it alleged that it was a corporation organized under the laws of the State of Indiana and owned and operated a line of railroad between Louisville in the State of Kentucky and Chicago in the State of Illinois and further charged that its directors and officers had without any authority from its stockholders and contrary to law about May 9, 1889, executed a written contract with the said Ohio Valley Improvement & Contract Company which purported to bind the complainant to guarantee the payment of the principal and interest of $2,375,000 of the first-mortgage bonds of the Richmond, Nicholasville, Irvine & Beattyville Railway Company and also that the officers of complainant had without authority and unlawfully actually endorsed the absolute guarantee of
41 the complainant upon $1,185,000 of such bonds and that the defendants owned and held in possession divers of such bonds bearing what purported to be the endorsement and guarantee of the complainant, and it thereupon prayed for the cancellation of such unlawful contract and guarantees and pending final hearing that an injunction might be granted by the court restraining each of the defendants from suing on such endorsements or selling, encumbering or parting with the possession of any of such guaranteed bonds or sending them out of the jurisdiction and for other relief.

Thereafter process to appear and answer in the premises was duly served upon each and every of the defendants whose names have been hereinbefore at large recited and an answer has been filed in substance admitting the material allegations of the complainant's bill, and replication has been filed to such answer.

On the filing of such bill, a temporary restraining order was granted against disposing of or encumbering any of the said guaranteed bonds or sending the same out of the jurisdiction and afterwards on notice and full hearing on May 28, 1890, an injunction was granted to like effect which order of court is still in full force.

Thereafter a stipulation in writing was filed in the cause wherein

it is admitted that the guarantees on such bonds purporting to bind the complainant were executed by its then officers without any vote of or authority from the stockholders of complainant.

On October 3, 1891, a decree was entered in said cause cancelling the guarantee of complainant on the bonds of said Richmond, Irvine & Beattyville Railway Company numbered from 601 to 675 both inclusive and such bonds were produced in open court and stamped in accordance with such decree of cancellation, which decree is in full force and effect.

On November 4, 1891, a like decree of cancellation was entered herein cancelling such guarantees upon the bonds of said issue numbered 676 to 767, both inclusive, and such bonds were produced in open court and stamped in accordance with such decree of cancellation which decree is still in full force and effect.

Since the institution of this action the work of construction on said Richmond, Nicholasville, Irvine & Beattyville railway has wholly ceased and such company has become hopelessly indebted and insolvent and the Central Trust Company the trustee in said first mortgage has brought suit in this court against said railway company to foreclose the said mortgage and sell the said rail-
42 way and for many months all the said mortgaged property has been in the possession of and operated by John MacLeod as the receiver of this court.

On November 13, 1891, in accordance with and execution of the conditions in the said trust deed contained the holders and owners of 2,261 bonds secured thereby being more than a majority thereof, served a written notice by them signed upon the said Central Trust Company declaring that for default in payment of an installment of semi-annual interest they elected to declare the entire principal of said $2,375,000 of mortgage bonds issued by said Richmond, Nicholasville, Irvine & Beattyville Railway Company to be at once due and payable and ordered the said trust company to proceed to enforce the collection of the principal and interest of all such bonds by the foreclosure of said mortgage and sale of the property.

Complainant files herewith a certified copy of the said bondholders' declaration as Exhibit A, and prays that the same may be taken as a part of this supplemental bill.

Complainant shows that by the publication of the deposition of a witness taken for use in such foreclosure proceeding which deposition was attached thereto the original declaration of such bondholders, it has within less than ten days last past become informed of the names of the principal holders of the bonds bearing its unauthorized and unlawful guarantee thereon for principal and interest and that such endorsed bonds are within the jurisdiction of the court.

On such information and believing the same to be in all respects true, the complainant charges that of the total issue of 2,375 bonds of $1,000 each issued by the said Richmond, Nicholasville, Irvine & Beattyville Railway Company, the following persons and corporations are the owners and holders of such bonds and the coupons thereto belonging to the amounts set opposite their respective names, that is to say:

Ohio Valley Improvement & Contract Co	1,194	bonds.
Vernon D. Price	16	"
Louisville Trust Co.	571	"
Aldolphus E. Richards	15⅓	"
Bennett H. Young	65⅓	"
John W. Stine	18	"
Louisville Trust Co. as assignee of Cornwall & Bro.	8	"
Louisville Trust Co. as assignee of Wm. Cornwall, Jr.	10	"
Thomas W. Bullitt	19½	"
43 Theodore Harris	30	"
Louisville Banking Co.	161	"
Dennis Long	10	"
Columbia Finance & Trust Co	75	"
Columbia Finance & Trust Co. in trust	63	"
Bernard Hollmann	10	"

Each and every of the said persons and corporations are citizens of the State of Kentucky, resident within this district and each and every of the said bonds and coupons thereto belonging so owned or held by the said persons and corporations are now in the city of Louisville and subject to the process and injunction of this court.

The complainant charges that nearly all of the uncancelled 1,106 of its pretended guarantees on such bonds are held by each and every one of the said parties last above named and that they and each of them do give out and pretend that the said illegal and unauthorized guarantees purporting to be executed by complainant are valid and binding upon it and enforcible against its property, and the said Hollman has within a month last past brought suit in the common pleas court of Jefferson county, Kentucky against complainant seeking to enforce its liability as such alleged guarantor upon divers coupons attached to ten of said bonds, which he avers belong to him, and process has been served upon the complainant and such cause is still depending in such State court.

The complainant avers that the controversy as to the validity of said contract dated May 9, 1889, and of its pretended guarantees for the principal and interest of the 1,185 bonds of the issue hereinbefore specified is within the primary and exclusive jurisdiction of this court and that it is entitled to the further benefit and enforcement of the decrees of cancellation hereinbefore entered in this cause until the entire 1,185 pretended guarantees of complainant are brought into court and cancelled and that to allow the said present holders of such pretended and disputed guarantees to alien or encumber or part with the possession of any of such bonds bearing thereon such pretended guarantees or to allow them to bring common-law suits on the constantly maturing coupons will tend to the great fraud and injury of complainant and will create a great multiplicity of suits and increase of cost and expense.

The complainant avers that all the allegations contained
44 in its original bill of complaint are true as therein set forth and it therefore prays that leave be granted to file this sup-

plemental bill and that the above-named Vernon D. Price, Bennet H. Young, John W. Stine, Louisville Trust Company as assignee of Cornwall & Bro., Louisville Trust Company as assignee of William Cornwall, Jr., Thomas W. Bullitt, Theodore Harris, Louisville Banking Company, Dennis Long, Columbia Finance and Trust Company and Bernard Hollman be made parties defendant hereto and that due process issue to compel them to appear and answer the original and this supplemental bill but without oath, and that on final hearing the complainant be granted all and singular the relief prayed in and by its original bill as well against those made parties defendant hereby as the original defendants, and it especially prays that the court will forthwith issue its order restraining each and every one of the persons and corporations now made defendants to this bill of supplement and also the Ohio Valley Improvement and Contract Company, Adolphus E. Richards and the Louisville Trust Company from selling, transferring, pledging, encumbering in any way or parting with the possession of any of the railroad bonds issued by the Richmond, Nicholasville, Irvine & Beattyville Railway Company and bearing thereon the pretended endorsement of the complainant or any of the coupons belonging to any of such endorsed bonds, and further restraining them and each of them from sending any of such bonds or coupons out of the jurisdiction of this court or bringing or prosecuting any suit against the complainant to enforce such pretended guarantees against it and for all such further relief as may be equitable.

LOUISVILLE, NEW ALBANY & CHICAGO RAILWAY COMPANY, *Complainant.*

HENRY CRAWFORD &
W. R. CRAWFORD, *Solicitors.*
HELM & BRUCE, *Solicitors.*

STATE OF ILLINOIS, } ss:
Cook County, }

W. H. McDoel on oath says that he is the general manager of the complainant The Louisville, New Albany & Chicago Railway Company and has as full and particular knowledge concerning the matters in controversy as any other officer or agent of such corporation; that he has read the foregoing supplemental bill and knows the contents thereof and that the matters therein set forth
45 are true to the best of his knowledge, information and belief. The names of the owners of nearly all the uncancelled 1,106 endorsed bonds and the fact that they were held in the city of Louisville only became known to complainant within three days and affiant verily believes that unless a temporary restraining order be at once and without notice granted against such holders that divers of such bonds and coupons will be sent out of the jurisdiction or transferred or other suits brought thereon.

W. H. McDOEL.

Subscribed and sworn to before me this January 27th, 1893. Witness my hand and official seal.

[SEAL.] CHAS. E. BYRNE,
Notary Public.

A copy.
Attest: THOS. SPEED, *Clerk.*

And on another day of said term of said court, to wit, on the 28th day of February, 1893, came the defendants, The Louisville Trust Company and Bernard Hollman by St. John Boyle, their counsel and severally moved that the injunction and restraining order entered in the foregoing cause be discharged and set aside.

The defendants, The Louisville Trust Company and Bernard Hollman by their said counsel filed their separate demurrers to the original & supplemental bills herein.

The demurrer of Louisville Trust Co. above referred to is as follows:

United States Circuit Court for the District of Kentucky.

THE LOUISVILLE, NEW ALBANY & CHICAGO R'Y CO.
vs.
THE OHIO VALLEY IMPROVEMENT & CONTRACT CO.

The Demurrer of the Louisville Trust Co. to the Original and Supplemental Bill.

The defendant The Louisville Trust Co., not confessing any of the matters in the complainant's original or supplemental bill contained to be true, in manner and form as therein alleged, does demur to the said original and supplemental bill and for cause thereof says that the same does not contain any matter of equity to entitle the complainant to any relief against the said defendant and it prays the judgment of the court whether it shall be compelled to make any further or other answer thereto, and that they be dismissed hence with their costs &c.

ST. JOHN BOYLE,
For Lou. Trust Co.

The undersigned counsel of the Louisville Trust Co. certifies that in his opinion, the foregoing demurrer is well founded in point of law.

ST. JOHN BOYLE.

The affiant, H. V. Loving, says that he is the president of the defendant, The Louisville Trust Co. and that the foregoing demurrer is not interposed for delay.

H. V. LOVING.

Sworn to before me by H. V. Loving, this Feb'y 25th, 1893.
FRANK A. GERST,
N. P., Jeff. Co., Ky.

46 And on the same day, to wit, the 3rd of April, 1893, came the Louisville Banking Company by counsel and filed in our clerk's office of our said court its demurrer herein—
Which is as follows:

Circuit Court of the United States, District of Kentucky.

LOUISVILLE, NEW ALBANY & CHICAGO R'Y CO.
vs.
OHIO VALLEY IMPROVEMENT & CONTRACT CO. } In Equity.

The Demurrer of the Louisville Banking Company to the Bill of Complaint of the Above-named Plaintiff.

This defendant, by protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint contained, to be true in such manner and form as the same are herein set forth and alleged, doth demur to the said bill. And for causes of demurrer showeth,

1st. That it appeareth by the plaintiff's own showing by the said bill, that it is not entitled to the relief prayed by the bill against this defendant.

2. That the said bill is exhibited against this defendant and against several other defendants, to the said bill, for several distinct and independent matters and causes, which have no relation to each other, and in which, or in the greater part of which this defendant is no way interested or concerned and ought not to be implicated.

Wherefore and for divers other good causes of demurrer appearing on said bill, this defendant doth demur thereto. And it prays the judgment of this honorable court whether it shall be compelled to make any answer to said bill; and it humbly prays to be hence dismissed with its reasonable costs in this behalf sustained.

A. BARNETT,
Solicitor and of Counsel for Defendant,
Louisville Banking Company.

47 I hereby certify that the foregoing demurrer is in my opinion well founded in point of law.
Louisville, Ky., April 3, 1893.

A. BARNETT,
Of Counsel for Defendant Louisville Banking Co.

STATE OF KENTUCKY,
County of Jefferson, District of Kentucky, } *sct:*

Theodore Harris, being duly sworn, deposes and says, I am the president of The Louisville Banking Company which is one of the above-named defendants. The foregoing demurrer is not interposed for delay.

THEODORE HARRIS.

Sworn to before me this 3rd day of April, 18[illegible]3.

E. D. WHISLER,

[SEAL.] *Notary Public, Jefferson County, Kentucky.*

Afterwards, to wit, on the 23rd day of May, 1893, came the parties by their counsel. The court being now fully advised of the demurrer of the defendants, The Louisville Trust Company, Bernard Hollman & Bennett H. Young to the bill and supplemental bill of complaint, also the motion of the defendant Hollman to discharge the injunction heretofore issued against him herein, delivered a written opinion, which is filed, and in pursuance thereof, it is ordered, adjudged and decreed that the demurrers of the defendants, The Louisville Trust Company, Bernard Hollman & Bennett H. Young to the complainant's bill and supplemental bill be and each of them are hereby overruled.

It is further ordered, adjudged and decreed that the motion of the defendant Bernard Hollman to discharge the injunction heretofore issued against him herein be and the same is hereby overruled.

It is further ordered that the defendants, The Louisville Trust Company, Bernard Hollman & Bennett H. Young do have until the June rules 1893 to file answers herein.

Came again the defendant Bernard Hollman by his counsel St. John Boyle, and moves the court to modify the above decree in so far as the same overrules his motion to discharge the injunction issued against him herein.

The written opinion above referred to is as follows:

48 LOUISVILLE, NEW ALBANY AND CHICAGO RAILWAY COMPANY
vs.
OHIO VALLEY IMPROVEMENT AND CONTRACT COMPANY and Others.

The questions now for consideration arise upon the demurrers filed by certain defendants to the supplemental bill filed by the original complainants.

For a proper understanding of these questions, it is necessary to state the substance of the original bill as well as of the supplemental bill.

The original bill alleged that the defendant, The Richmond, Nicholasville, Irvine and Beattyville Railway Co., hereafter styled the Beattyville R'y Co., — for the construction and equipment of its line of railway situated in the State of Kentucky. That the construction — as a consideration was to receive the first-mortgage bonds of the railway Co. to the extent of $25,000 per mile, deliverable as the work progressed, and also a controlling interest in its shares of stock.

The bill then charged that, the complainant railway Co. had entered into a contract with the defendant construction Co. by which, in consideration of a transfer to it of a majority of the entire stock of the Kentucky Railway Co., that it, the complainant railway Co., would guarantee the payment of the principal and interest of the

railway bonds to be received by the construction Co. The bill further alleged that this contract had been so far executed that the guaranty of the railway Co. had been endorsed upon 1,185 of the Beattyville R'y Co.'s bonds, which had been delivered to the construction Co. This endorsement upon these bonds was in these words: "For value received, the Louisville, New Albany and Chicago Railway Company, hereby guarantees to the holder of the within bond the payment by the obligor therein, of the principal and interest thereof, in accordance with the tenor thereof."

It also charged that the bonds thus guaranteed had been delivered to the construction Co. and that a large portion of them were still held by the construction Co.; that others had been delivered to certain persons who had subscribed therefor, and who were named as defendants to the bill; that others still, were in the hands of the Louisville Trust Co., to be delivered to subscribers when paid for. The bill alleged such a state of facts as to make the guaranty upon such bonds illegal and fraudulent, and the contract for the guaranty of further bonds to be received by the construction Co. likewise illegal.

49 Upon the filing of the bill the usual injunction was granted, enjoining all of the named defendants from transfer-ing, encumbering, selling or removing from within the jurisdiction of the court any of the bonds thus illegally and fraudulently guaranteed; and such steps were thereafter had, under the original bill and answer, as resulted in a decree cancelling the guaranty upon all the bonds then in the possession or control of the construction Co.

Since that decree, complainant company has filed a supplemental bill, alleging, among other things, that the work of construction on the Beattyville railway has been abandoned; that it is insolvent and in the hands of a receiver appointed by this court, under a bill filed by the holders of its mortgage bonds, and that complainant has lately learned that certain persons, who are made defendants to this supplemental bill, claim to be the owners and holders of Beattyville Railway bonds, many of them guaranteed by complainant Co., and which have not been heretofore cancelled. The supplemental bill prays that these holders of said guaranteed bonds be made defendants, and that they be required to bring their bonds into court and submit to a cancellation of the guaranty thereon.

Certain of these defendants have appeared and demurred, upon the ground that this court has no jurisdiction of the matters complained of, no case appearing on the face of the bill entitling the complain-t in a court of equity to any relief against them. Neither the bill nor the supplemental bill contain- any specific allegation as to the circumstances under which the demurring defendants became holders of the bonds. It does not affirmatively appear whether they are, or are not, holders for value and without notice. But it seems to me, that where a bill alleges a state of facts, showing that negotiable securities have been issued illegally and fraudulently, and have come into the possession of the defendant, that it devolves upon the defendant, in view of such fraud and illegality, to show that he is a purchaser for value.

"Where fraud or illegality in the inception of a negotiable paper is shown, the endorsee, before he can recover, must prove that he is a holder for value; the mere possession of the paper under such circumstances is not enough."

Story on Prom. Notes, section 196; Smith *vs.* Sax County, 11 Wall., 139.

"It is an elementary rule, that if fraud or illegality in the inception of a negotiable paper is shown, the endorsee, before he can recover, must prove that he is a holder for value; the mere possession of the paper under such circumstances is not sufficient."

Stewart *vs.* Landsing, 104 U. S., 505. Lytle *vs.* Lansing, 147 U. S., 59.

For the purpose of this demurrer, the defendants must be treated as standing, with respect to these guaranteed bonds, in no better situation than the construction Co.

Defendants next insist, that a court of equity could not entertain jurisdiction of a suit to set aside any illegal contract, where there is an adequate and sufficient defense at law.

Cancellation is one of those purely equitable remedies, exercised exclusively by courts of equity. The jurisdiction has always existed, but will not generally be exercised if the legal remedy, whether defensive or affirmative, is certain, complete and adequate.

There is a strong line of authority from courts of the highest respectability, supporting the view that equity has jurisdiction to decree cancellation of a deed, bond, note or other obligation, whether the instrument is or is not void at law, or whether it be void for matter appearing on its face or *aliunde*.

Hamilton *vs.* Cummings, 1 J. C. R. 521, and cases cited, Eng. & Amr. Jones *vs.* Perry, 2 Yerger, 25. Johnson *vs.* Copper, 2 Yerger, 525.

But in the United States courts the jurisdiction has been much more sparingly exercised, and some circumstance must appear calling strongly for equitable interposition. Thus in the case of Grand Chute *vs.* Winegar, it was held that a bill would not lie to cancel bonds held by the defendant, where it appeared on the face of the bill that the defense at law was perfect. 15 Wall. 373.

Under the strictest limitations as to the circumstances justifying the exercise of equitable jurisdiction for purpose of cancellation, it would seem, that if for any reason it appears that a legal remedy would be inadequate to the attainment of complete justice; as where the instrument sought to be cancelled is negotiable, and has not matured. The remedy at law in such cases must be deemed inadequate, inasmuch as the complainant would be subjected to the hazard of being cut off from defenses if the instrument should come to the hands of an innocent holder for value. So where any vexatious or injurious use of an instrument could be made if suffered to remain in the hands of one not entitled to enforce payment, equity will interpose and cancel the instrument. Pom. Eq. Jur. sec. 221, 911.

I do not at this state of this case deem it necessary or proper to determine whether or not these bonds in the hands of inno-
51 cent purchasers, for value, would be enforcible against the complainant company. The question should be reserved for further argument and careful consideration. But if the defense of the complainant company should be cut off in case these bonds should pass into the hands of *bona fide* holders, it is clear that equity should interpose and enjoin such transfer and cancel the guaranties endorsed upon them. Upon another ground altogether, I am of opinion that equity has jurisdiction to maintain this bill, and that is, to prevent a multiplicity of suits. Exclusive of the bonds heretofore cancelled, the complainant's guaranty appears upon some six or seven hundred bonds of $1,000 each.

It would become liable to suits upon coupons upon each bond as it matures. It is obvious, that in course of time these bonds might pass into the hands of hundreds of persons, and the complainant company thus be subjected to a ruinous number of actions. A judgment in its favor, as between it and a particular holder, would not include any other holder. If the defenses to these bonds be treated as purely legal and the remedy sought a legal remedy, the jurisdiction would exist. "It is not essential that the remedy sought shall be purely an equitable remedy. The very fact that a multitude of suits are to be prevented constitutes the very inadequacy of legal methods and remedies, which calls the concurrent jurisdiction of a court of equity into being under such circumstances, and allows it to adjudicate upon purely legal rights and confer purely legal reliefs." I Pom. Eq. Jur., sec. 243.

There has been much conflict of authority as to the circumstances which will justify a court of equity in taking jurisdiction to prevent a multiplicity of suits, but an examination of numerous authorities, brings me to the conclusion that where a complainant may be subjected to a multitude of separate suits, by separate claimants, and the judgment in one case would not be conclusive, in others, that a case arises for equitable jurisdiction, if the defendants have a community of interest in the questions at issue and in the kind of relief sought by reason of the common origin of their several claims. This conclusion has the support of Mr. Pomeroy, who, after an elaborate consideration of this question, says: "Under the greatest diversity of circumstances, and the greatest variety of claims arising from unauthorized public acts, private tortious acts, invasion of property rights, violation of contract obligations, and notwithstanding the denials of some American courts, the weight of authority is simply overwhelming that the jurisdiction may and should be exercised, either on behalf of a
52 numerous body of separate claimants against a single party, or on behalf of a single party against such a numerous body, although there is no common title, nor community of right, nor of interest in the subject-matter, but because there is merely a community of interest among them in the questions of law and fact involved in the general controversy, or in the kind and form of relief demanded and obtained, by or against each individual member of

the numerous body. In a majority of the decided cases, this community of interest in the questions at issue, in the nature and kind of relief sought has originated from the fact that the separate claims of all the individuals composing the body, arise by means of the same unauthorized, unlawful and illegal act of proceeding. Even this external feature of unity, however, does not always exist, and is not deemed essential. Courts of the highest standing and equity have repeatedly appeared and exercised this jurisdiction, where the individual claims were not only legally separate, but were separate in term, and arose from an entirely separate and distinct transaction, simply because there was a community of interest among all the claims at issue and in the remedy." Pom. Eq. Jur., sec. 221, 911, *et seq.*

The case of New York and New Haven Railway Co. *vs.* Schuyler *et al.*, reported in 17 New York, 592, is an interesting and instructive case. In that case it appeared that spurious certificates of stock in a railroad corporation had been issued by an officer having apparent authority to do so, and undistinguishable on the face from certificates of genuine stock, and were outstanding in the hands of numerous holders. The holders of such spurious certificates were made party defendants to the bill filed by the railroad company. After an elaborate consideration of the question, as to whether or not the bill would lie, that court maintained its jurisdiction, and held that, the false certificate having a common origin and common ground of invalidity with all, though the holders became such under different circumstances and conveyances and claim different rights, yet they were all properly joined as defendants, and the bill maintained as a bill to prevent a multiplicity of suits.

In Supervisors *vs.* Deyoe, we find a similar case. The treasurer of Saratoga county, under an authority to issue notes for money advances to the county to the amount of some $20,000, issued 73 notes to the amount of $138,000. These notes were held by 53 persons, many of whom had brought separate suits upon their notes. The supervisors filed a bill in equity against all the holders of 53 said notes, including those who had brought suits at law. Upon demurrer to the bill, it was held, that upon the face a case was made entitling the plaintiff upon equitable principles to implead the holders of the notes for the purpose of having their respective rights and the liability of the company determined in one action; that the claims were of the same general character, and that the action was maintainable for the purpose of preventing a multiplicity of suits and to protect plaintiff against the hazard of a double recovery. 77 N. Y., 219.

The case of Sheffield Water Works *vs.* Yeoman, 2 Law Reports, Ch. App. case 8 & 11, was this: A very large number of persons held separate claims against the water works company. The claims were for damages originating in an inundation resulting from the breaking of a reservoir. Under a special act commissioners were appointed to inquire into and assess these damages and issue certificates upon the several claims. The water works claimed that

the power of the commissioners had expired and that a large number of these certificates were in consequence invalid.

A bill by the company, against a few, as representing the whole number, was filed, and a demurrer sustained. The court held that as the rights of all depended upon the same question, and that although the defense could be made at law, that it was "a very fit case, by analogy, at least, to a bill of peace, for a court of equity to interpose and prevent the unnecessary expense and litigation which would be thus occasioned, and to decide once for all the validity or invalidity of the certificates upon which the claims of all persons depend." The demurrer must be overruled.

See, also, Black *vs.* Shruve, 3 Halst. Ch., 440.

One of the defendants has a suit pending in a State court against the complainant Co. upon matured coupons. The motion to discharge the injunction against the further prosecution of that suit, is disallowed.

On the 16th day of September, 1893, came the Louisville Trust Company by counsel and filed its answer to the original and supplemental bills of complaint herein which is as follows:

54 United States Circuit Court, District of Kentucky.

THE LOUISVILLE, NEW ALBANY & CHICAGO RAILWAY COMPANY
vs.
THE OHIO VALLEY IMPROVEMENT & CONTRACT COMPANY, &c.

The defendant, The Louisville Trust Company, at one time called the Louisville Safety Vault & Trust Company for answer to the original and supplemental bills of complaint of the said Louisville, New Albany & Chicago Railway Company or to so much thereof as they are advised is material or sufficient to be answered, say that the said complainant, The Louisville, New Albany & Chicago Railway Company is a citizen of the State of Kentucky duly created and existing as such corporation under and by virtue of the laws of said State, that the said complainant procured to be passed by the General Assembly of the Commonwealth of Kentucky, an act entitled "An act to incorporate the New Albany & Chicago Railway Company," approved April 8th, 1890, under and by which act the said complainant was thereby constituted a corporation with power to sue and be sued, contract and be contracted with, to have and use a common seal with the power incident to corporations and authority to operate a railroad; that the said company was thereupon authorized to purchase real estate for its purposes and to build connecting lines of railroad with the right to condemn all property required for the carrying out of such objects and were authorized to issue bonds upon the same and secure the payment thereof by a mortgage upon its property, rights and franchises, and the provisions of the said act were accepted by the complainant; and under the authority thereof, they built lines of railroad in the county of

Jefferson in the State of Kentucky, and condemned property in the city of Louisville and in the said county under its authority and for the purposes set forth, and have since and are now using and operating said lines of railroad and the said property so purchased and condemned; and afterwards the said complainant procured another act to be passed by the General Assembly of the Commonwealth of Kentucky, entitled "An act to amend an act entitled An act to incorporate the Louisville, New Albany & Chicago Railroad Company approved April 8th, 1890," which was approved, whereby it was provided and enacted that the said company was authorized and empowered to endorse or guarantee the principal and interest of the bonds of
55 any railway company then constructed or to be thereafter constructed within the limits of the State of Kentucky and the defendant says that by reason of the premises, the said complainant became and was and is a corporation created and existing under and by virtue of the laws of the State of Kentucky, and a citizen thereof, with the rights and powers conferred by the acts aforesaid, and the defendant says that it is not true that all the lines of railroad owned by the complainant *is* situated within the State of Indiana, but on the contrary they have railroad tracks and connecting lines, depot grounds and other property in the city of Louisville aforesaid. This defendant further says it has no knowledge or information sufficient to found a belief whether or not it is true that the certificates of stock issued by the complainant recite that it is a corporation of Indiana but it denies that the complainant possesses no rightful corporate powers or franchises except such as have been granted to it by the State of Indiana; and this defendant further says that it has no knowledge or information upon which to found a belief as to who constituted at the time mentioned in the said bill, the board of directors of the plaintiff nor of the time, manner and substance of any negotiations between the defendant, The Ohio Valley Improvement & Contract Company *of* the said complainant in relation to the alleged understanding, that said directors and their friends or any of them would purchase any part of the first-mortgage bonds of the said Richmond, Nicholasville, Irvine & Beattyville Railway Co. This defendant has no knowledge, information or belief upon the subject except as contained in the original bill and answer herein, but as to all such charges this defendant demands further proof, and this defendant further says that it has no knowledge, information or belief concerning the alleged acts of Dowd & Carson, or of the board of directors of the said complainant in regard to any purchase of the bonds of such Beattyville Railroad Company, or whether or not there was present at the alleged meeting of directors on October 8th, 1889, any lawful quorum of directors of which, if any, directors were present at any such meeting. This defendant has no knowledge, information or belief that any of the allegations in relation thereto are true and this defendant has no knowledge, belief or information sufficient to form a belief that the said directors or officers or any of them passed any resolution or made any agreement or purchased any of such bonds under the circumstances set forth in the said bill or that any of such

circumstances as alleged, existed in fact. On the contrary,
56 this defendant alleges upon information and belief, that the board of directors of the complainant in good faith and believing it to be for the interest of the complainant made and entered into the arrangement to guarantee the bonds of the said Richmond, Nicholasville, Irvine & Beattyville Railroad Co.; that a lawful quorum was present and the said arrangement was approved, ratified and confirmed by more than a majority of all of such board of directors.

This defendant denies that the president of the complainant illegally or without right endorsed the guarantee upon the said bonds or any of them; and this defendant has no knowledge or information that the said guarantee was not fully authorized or ratified by the holders of a majority in amount of the capital stock of the complainant and this defendant denies that the complainant before then above-mentioned guarantee, had guaranteed the bonds of the Louisville Southern Railroad Company or any part thereof.

And this defendant says that the said complainant having full and lawful authority, did make and endorse upon each of said 1,185 bonds, its agreement and guarantee of the payment of the principal and interest of such bonds to the holder according to the tenor thereof, a copy of the said guarantee is attached hereto, marked Exhibit A, and did thereupon receive and take possession of a majority of the stock of the said Richmond, Nicholasville, Irvine & Beattyville Railroad Company in accordance with the agreement under which such guarantee was made and to that extent fully completed and executed the said agreement.

And this defendant further says that it is now the holder of $125,000 of the said bonds of the Richmond, Nicholasville, Irvine & Beattyville Railroad Company and upon each of said bonds the said complainant by its agreement endorsed thereon duly and fully executed, guaranteed the payment of the principal and interest thereof according to the tenor thereof, and this respondent is the holder thereof in good faith and became such for value and without notice of any defect, irregularity or fraud in connection therewith.

This defendant says that it became the holder of such bonds as follows:

On September 13th, 1889, it loaned the Ohio Valley Improvement & Contract Company $100,000 for which it took the note of said improvement company of such date, payable four months thereafter with $216,000 of the first-mortgage bonds of the said Rich-
mond, Nicholasville, Irvine & Beattyville Railroad Company
57 as collateral and which said bonds were numbered from one to two hundred and sixteen inclusive and which did not have thereon the guaranty of the complainant; that afterwards on the 20th of November, 1889, this defendant made an agreement with the said improvement company by which it agreed to surrender the said 216 bonds and to take in lieu thereof as collateral security for the said loan $125,000 of said bonds guaranteed by the complainant and that the said improvement company received the said

216 bonds and placed in their stead until the guaranteed bonds should be delivered to this defendant 125 of similar bonds Nos. 647 to 771 inclusive; that the said note of September 13th was not paid at maturity but was renewed on January 16th, 1890, for six months and that afterwards on March 17th, 1890, those bonds were withdrawn and similar bonds guaranteed by the complainant were substituted in lieu thereof as had been agreed and which bonds were numbered from 1051 to 1175 inclusive and which bonds have ever since, and are now held by this defendant as collateral as aforesaid. The said note of January 16th was not paid at maturity but was renewed by a new note dated July 19th, 1890, payable four months thereafter and 75 bonds of the same issue numbered from 1620 to 1694 inclusive but which were not guaranteed by the complainant were added as additional collateral, the said last-mentioned note was not paid at maturity but was renewed by a note dated November 22nd, 1890, at four months with the same collateral. The said note was not paid at maturity but on March 23rd, 1891, was renewed by a note of the said improvement company dated March 17th, 1891, due July 1st, 1891, fixed for $125,000 and at the same time this defendant loaned the said improvement company an additional $25,000 and for the said note it continued to hold the before-mentioned collateral and received as additional security other bonds of the same issue numbered from 1401 to 1450 inclusive, Nos. 1186 to 1198 inclusive, 1751 to 1787 inclusive, 2301 to 2375 inclusive, 2176 to 2200 inclusive, none of which new bonds were endorsed by the complainant.

This defendant says that certain of the said bonds were afterwards during the currency of said note exchanged for bonds which were endorsed by the complainant but from which the said endorsement has with the consent of this defendant been erased; that this defendant now only holds the $125,000 of bonds guaranteed as aforesaid, numbered from 1051 to 1175 inclusive, which said bonds it received as above set forth on March 17th, 1890, in pursu-
58 ance of the previous agreement to surrender the $216,000 of unguaranteed bonds and receive $215,000 of guaranteed bonds in lieu thereof; that no part of the debt has ever been paid but the same has been increased as above set forth and the defendant has continued from that time to hold the said bonds as collateral aforesaid.

This defendant at the time of making the said agreement and at the time it received the said guaranteed bonds had no knowledge, information or belief or any reasonable grounds to believe or suspect and does not now believe that the said bonds had been issued by or through any fraud or fraudulent agreement of the officers of complainant or of the Ohio Valley Improvement Company or that the said guarantee had been authorized at any meeting of directors at which there were present less than a quorum or that the same had not been authorized and approved upon the petition or by a vote of the majority of the stockholders of the complainant, but on the contrary says it believed that all necessary and lawful steps had been taken and that the said guarantee of the complainant endorsed

on said bonds was authorized, legal and binding and on the faith thereof this defendant surrendered the other bonds and renewed its loans and loaned still additional money to the Ohio Valley Improvement & Contract Company as above set forth.

Wherefore the defendant prays that the original and supplemental bills be dismissed, the injunction herein discharged for judgment for its costs and for all other proper relief.

ST. JOHN BOYLE,
Solicitor for Defendant.

Guaranty (Copy).

"For value received the Louisville, New Albany & Chicago Railway Company hereby guarantees to the holder of the within bond, the payment by the obligor therein of the principal and interest thereof in accordance with the tenor thereof.

In witness whereof the said railway company has caused its corporate name to be signed hereto by its president and its seal to be attached by its secretary."

And on September 16th, 1893, came the complainant by counsel and filed its replication to the answer of the Louisville Trust Company herein.

59 (Replication omitted by stipulation.)

Came also the Louisville Trust Company by counsel and filed exceptions to the depositions of H. V. Loving, A. E. Richards, Louis V. Cassilly and Wm. G. Wetterer taken on behalf of complainant herein, and the court not being advised thereof takes time.

The exceptions of Louisville Trust Co. referred to are as follows:

United States Circuit Court for the District of Kentucky.

LOUISVILLE, NEW ALBANY & CHICAGO RAILWAY COMPANY
vs.
OHIO VALLEY IMPROVEMENT COMPANY, &C.

Exceptions of the Louisville Trust Company to the Depositions of H. V. Loving, A. E. Richards, Louis V. Cassilly, Wm. G. Wetterer.

The defendant, The Louisville Trust Company excepts to the reading of the depositions of H. V. Loving, A. E. Richards, Louis V. Cassilly, and Wm. G. Wetterer, heretofore taken in this suit on behalf of the complainant and certified by Charles A. Graham, special examiner, February 21st, 1893, because the same were taken prematurely and before the cause was at issue and without any special order or leave of court.

Wherefore this defendant prays that the said depositions be suppressed.

ST. JOHN BOYLE,
Att'y for Louisville Trust Co.

And at a term of our court held for its October term, 1893, to wit, on the 2nd day of October, 1893, came The Louisville Banking Company and Theodore Harris defendants herein by counsel and filed their separate answers to the original and supplemental bill of complaint herein.

The answer of Louisville Banking Company is as follows:

60 United States Circuit Court for the District of Kentucky.

THE LOUISVILLE, NEW ALBANY & CHICAGO RAILROAD COMPANY
vs.
THE OHIO VALLEY IMPROVEMENT & CONTRACT COMPANY.
} Answer of Louisville Banking Company.

The defendant The Louisville Banking Company, for answer to the original and supplemental bills of complaint of the said Louisville, New Albany & Chicago Railway Company, or so much thereof as they are advised is material or sufficient to be answered, say, that it is a banking corporation, created, organized and existing as such under and by virtue of an act of the General Assembly of the Commonwealth of Kentucky, entitled, "An act to incorporate the Louisville Banking & Insurance Company," approved January 24, 1867, with various amendments thereto, with power to sue and be sued, contract and be contracted with, to discount and buy notes and bills of exchange; to lend money, and to carry on a general banking business, with the principal place of business at Louisville, Ky.

This defendant says that the said complainant, The Louisville, New Albany & Chicago Railway Company, is a citizen of the State of Kentucky, duly created and existing as such corporation under and by virtue of the laws of *the State of* said State; that the said complainant procured to be passed by the General Assembly of the Commonwealth of Kentucky an act entitled "An act to incorporate the Louisville, New Albany & Chicago Railway Company," approved April 8, 1880, under and by which act the said complainant was thereby constituted a corporation, with power to sue and be sued; contract and be contracted with; to have and use a common seal, with the power incident to corporations and authority to operate a railroad; that the said corporation was thereupon authorized to purchase real estate for its purposes and build connecting lines of railroad, with the right to condemn all property required for the carrying out of such objects, and were authorized to issue bonds upon the same and secure the payment thereof by a mortgage upon its property, rights and franchises; and the provisions of the said act were accepted by the complainant, and under the authority thereof they built lines of railroad in the county of Jefferson, in the State of Kentucky, and condemned property in the city of Louisville and in the said county, under its authority and for
61 the purposes set forth, and have since and are now using and operating said lines of railroad and the said property so purchased and condemned; and afterwards the said complainant pro-

cured another act to be passed by the General Assembly of the Commonwealth of Kentucky, entitled, "An act to amend an act entitled 'An act to incorporate the Louisville, New Albany & Chicago Railway Company, approved April 8, 1880,'" which was approved, whereby it was provided and enacted that the said company was authorized and empowered to endorse or guarantee the principal and interest of the bonds of any railroad company then constructed or to be thereafter constructed within the limits of the State of Kentucky, and the defendant says that by reason of the premises the said complainant became and was and is a corporation created, and existing under and by virtue of the laws of the State of Kentucky and a citizen thereof, with the rights and powers conferred by the acts aforesaid, and defendant says that it is not true that all the lines of railroad owned by the complainant are situated within the State of Indiana, but on the contrary, they have railroad tracks and connecting lines, depot grounds and other property in the city of Louisville aforesaid.

This defendant further says that it has no knowledge, or information sufficient to found a belief whether or not it is true that the certificates of stock issued by the complainant recite that it is a corporation of Indiana, but it denies that the complainant possessed no rightful corporate powers or franchises such as have been granted to it by the State of Indiana, and this defendant further says that it has no knowledge or information upon which to found a belief as to who constituted at the time mentioned in said bill, the board of directors of the plaintiff, nor of the time, manner or substance of any negotiations between the defendant The Ohio Valley Improvement & Contract Company, or the said complainants, in relation to the alleged understanding, that said directors and their friends, or any of them would purchase any part of the first-mortgage bonds of the said Richmond, Nicholasville, Irvine & Beattyville Railway Company.

This defendant has no knowledge, information or belief upon the subject, except as contained in the original bill and answer herein, but as to such charges this defendant demands further proof, and this defendant further says that it has no knowledge, information or belief concerning the alleged acts of Dowd and Carson, or of the board of directors, of the said complainant in regard to any purchase of the bonds of such Beattyville Railroad Company, or
62 whether or not there was present at the alleged meeting of directors on October 8, 1889, any lawful quorum of directors, or which if any directors were present at any such meeting.

This defendant has no knowledge, information or belief that any of the allegations in relation thereto are true, and this defendant has no knowledge, information or belief, sufficient to form a belief that the said directors or officers or any of them passed any resolution or made any agreement or purchased such bonds under the circumstances set forth in the said bill, or that any of such circumstances as alleged existed in fact. On the contrary, this defendant alleges upon information and belief that the board of directors of the complainant in good faith and believing it to be for the interest

of the complainant, made and entered into the arrangement to guarantee the bonds of the said Richmond, Nicholasville, Irvine & Beattyville Railroad Company; that a lawful quorum was present, and the said arrangement was approved, ratified and confirmed by more than a majority of all of such board of directors.

This defendant denies that the president of the complainant illegally or without right or power endorsed the guarantee upon the said bonds, or any of them; and this defendant has no knowledge or information that the said guarantee was not duly authorized or ratified by the holders of a majority in amount of the capital stock of the complainant; and this defendant denies that the complainant before the above-mentioned guarantee, had guaranteed the bonds of the Louisville Southern Railroad Company or any part thereof.

And this defendant says that the said complainant having full and lawful authority, did make and endorse upon each of said 1,185 bonds, its agreement and guarantee of the payment of the principal and interest of such bonds to the holder, according to the tenor thereof, and did thereupon receive and take possession of a majority of the stock of the said Richmond, Nicholasville, Irvine & Beattyville Railroad Company, in accordance with the agreement under which such guarantee was made, and to that extent fully completed and executed the said agreement. A copy of the said guarantee is attached hereto marked "Exhibit A."

This defendant further says that it is now the holder and owner of ten thousand ($10,000) dollars of the said bonds Nos. 160 to 169, both inclusive, of the par value of one thousand ($1,000) dollars each, of the Richmond, Nicholasville, Irvine & Beattyville Railroad Company, and upon each of said bonds said complainant by its agreement endorsed thereon, duly and fully executed, guar-
63 anteed the payment of the principal and interest thereof according to the tenor thereof, and this defendant is the holder and owner thereof in good faith, and became such for value and without notice of any defect, irregularity or fraud in connection therewith.

This defendant says that the said bonds were pledged to it in the regular course of its business, to secure the payment of a debt simultaneously created with said pledge, and that at the maturity of said debt for which said ten bonds were pledged to secure; the makers of the notes for which the same were pledged failed to pay said notes, and this defendant, in accordance with the terms of said pledge, advertised and sold the same at public auction, at which the same were bid in and bought for and by this defendant, and this defendant is now the owner and holder thereof.

This defendant says that it is the holder of forty-eight other of said bonds guaranteed as aforesaid, viz: 242, 243, 138, to 143 both inclusive; 117 to 115 both inclusive; 238 to 239 both inclusive; 258 to 260 both inclusive; 240 to 241 both inclusive; 225 to 227 both inclusive; 203 to 212 both inclusive; 155 to 159 both inclusive; 118 to 122 both inclusive; 29 to 30 both inclusive; 200 to 202 both inclusive; which were and are now pledged to this defendant

simultaneously with the creation of the debts for which they were pledged, to secure all of which debt- are due this defendant and unpaid, and upon each of said bonds the complainant by its agreement endorsed thereon, duly and fully executed, guaranteed the payment of the principal and interest thereof, and this defendant is the holder thereof in good faith, and became such for value and without notice of any defect, irregularity, or fraud in connection therewith, prior to the 15th day of May, 1890.

This defendant says that at the time of receiving and accepting the pledge of said bonds it had no knowledge, information or belief, or any reasonable grounds to believe or suspect, and does not now believe that the said bonds have been issued by or through any fraud, or fraudulent agreement of the officers of the complainant, or of the Ohio Valley Improvement & Contract Company, or that the said guarantee had been authorized at any meeting of directors at which there were present less than a quorum; or that the same had not been authorized and approved upon the petition, or by a vote of the majority of the stockholders of the complainant; but on the contrary says it believes that all lawful and necessary steps had been taken, and that said guarantee of complainant endorsed on said bonds was authorized, legal and binding, and
64 on the faith thereof this defendant accepted and received the pledge of said bonds and lent money thereon as aforesaid.

This defendant denies that the holders of the guaranteed bonds aforesaid are numerous, or that there is any danger, or that there will be any multiplicity of suits against the complainant on account thereof, and this defendant is informed and believes that there is now pending against the complainant on account of such guarantee only one suit, to wit, that brought by the defendant, Bernard Hollman, and that no other suits are or have been threatened against the complainant up to the present time.

This defendant denies that it is the owner or holder of 161 of said guaranteed bonds or coupons, and as alleged in the bill and supplemental bill, but this defendant is the holder and owner of 58 of said bonds and coupons, which were acquired by this defendant as hereinbefore set out.

Wherefore, this defendant prays that the original and supplemental bills be dismissed; the injunction herein discharged, for judgment for its costs and all proper relief.

BARNETT, MILLER & BARNETT,
Att'ys for Lou. B'k'g Co.

THEODORE HARRIS.

STATE OF KENTUCKY, }
Jefferson County, } *sct:*

Personally appeared before the undersigned, a notary public in and for the State and county aforesaid, Theodore Harris, on September 19, 1893, who being duly sworn deposed that he is the president of The Louisville Banking Company (def't) and that all of the statements contained in the foregoing answer of his own knowledge

are true, and those upon information and belief he believes to be true.

[SEAL.] E. D. WHISLER,
N. P., Jeff. Co., Ky.

The "guaranty" referred to in above answer is as follows:

(*Guaranty.*)

For value received the Louisville, New Albany & Chicago
65 Railway Company hereby guarantees to the holder of the within bond, the payment by the obligor therein of the principal and interest thereof, in accordance with the tenor thereof.

In witness whereof the said railway company has caused its corporate name to be signed hereto by its president and its seal to be attached by its secretary.

And on the 24th day of October, 1893, came the complainant by counsel and filed its separate replications to the answers of Bernard Hollman, Theodore Harris and the Louisville Banking Company herein.

Which said replications being similar to the one of said complainant filed on the 16th of September, 1893, to answer of the Louisville Trust Company, are not here repeated.

And on the 6th day of November, 1893, came the Louisville Banking Company and Theodore Harris by counsel and filed in the clerk's office of our said court their respective exceptions to depositions of Richards, &c., which are as follows:

66 United States Circuit Court, Sixth Kentucky District.

LOUISVILLE, NEW ALBANY & CHICAGO RAILWAY COMPANY, Complainant, *vs.* OHIO VALLEY IMPROVEMENT & CONTRACT CO. *et al.*, Defendant-. } 6075.

Exceptions of the Louisville Banking Co. to the depositions of Attilla Cox, H. V. Loving, A. E. Richards, Louis V. Cassilly, B. H. Young, J. M. Fetter, Theodore Harris, W. G. Wetterer, and V. D. Price.

The defendants The Louisville Banking Company, objects and excepts to the reading of depositions of Attilla Cox, H. V. Loving, A. E. Richards, Louis V. Cassilly, B. H. Young, Theodore Harris, J. M. Fetter, W. G. Wetterer and V. D. Price, hereinbefore taken in this action on behalf of the complainant and certified by Charles A. Graham, special examiner, February 21, 1893, because said depositions were taken prematurely, and before the cause was at issue, and without any special order or leave of court or notice to this defendant.

Wherefore, this defendant prays that the said depositions be suppressed.

BARNETT, MILLER & BARNETT,
Att'ys for Lou. B'k'g Co.

Exceptions of Harris above referred to are similar to exceptions filed by Lou. B'k'g. Co., and are not here repeated.

And on another day of our October term of said court, to wit, on the 2d day of December, 1893, comes complainant by its solicitors and on leave of court first had and obtained files its second supplemental bill herein duly verified by affidavit making new parties to this cause and praying the granting of an injunction as hereinafter stated. It is thereupon ordered that the following parties named in said supplemental bill be made defendants in this cause and that process issue against them to appear herein, viz: W. H. Dillingham, J. H. Leathers, Mrs. S. F. Forrester, M. A. Kuston, Ben. C. Weaver, Jr., R. L. Whitney, R. Whitney, A. Schwabacker, S. A. Cannon, Burton A. Duerson, W. M. Carlton, J. A. Shuttleworth, A. J. Ross, John T. Bate, Jr., Allen R. White and Kentucky
67 National Bank. And upon the statements in the verified supplemental bill contained, and on motion of complainant's solicitors, it is by the court now ordered that the said Kentucky National Bank, W. C. Nones, W. H. Dillingham, J. W. Leathers, Mrs. S. F. Forrester, M. A. Kuston, Ben. C. Weaver, Jr., R. L. Whitney, R. Whitney, A. Schwabacker, S. A. Cannon, Burton A. Duerson, W. M. Charlton, J. A. Shuttleworth, A. J. Ross, John T. Bate, Jr., and Allen R. White be and they are hereby enjoined and restrained from selling, transferring, pledging or encumbering or in any way parting with the possession of any of the bonds of the Richmond, Nicholasville, Irvine & Beattyville Railway Company, or the coupons thereto belonging purporting to be guaranteed by the complainant. And they are also enjoined from sending any of such bonds or coupons out of the jurisdiction of this court, or from bringing or further prosecuting any suit or suits against the complainant to recover on any of such bonds or coupons. And the court not being advised of this motion takes time.

The second supplemental bill referred to is as follows:

United States Circuit Court, District of Kentucky.

LOUISVILLE, NEW ALBANY & CHICAGO RAILWAY COMPANY *vs.* OHIO VALLEY IMPROVEMENT & CONTRACT COMPANY and Others.	In Equity.

The Second Supplemental Bill of the said Louisville, New Albany & Chicago Railway Company.

The complainant by way of second supplement to its original bill shows to the court:

That heretofore, to wit, on April 9th, 1890, it filed its original

bill in this court against the above-named Ohio Valley Improvement & Contract Company, The Richmond, Nicholasville, Irvine & Beattyville Railway Company, The Louisville Safety Vault and Trust Company, The Louisville Trust Company, Adolphus E. Richards, William Cornwall, Jr., James M. Fetter and divers other defendants, wherein and whereby it alleged that it was a corporation organized under the laws of the State of Indiana and owned and operated a line of railroad between Louisville in the State of Kentucky and Chicago in the State of Illinois and
68 further charged that its directors and officers had without any authority from its stockholders and contrary to law about May 9, 1889, executed a written contract with the said Ohio Valley Improvement & Contract Company, which purported to bind the complainant to guarantee the payment of the principal and interest of $2,375,000 of the first-mortgage bonds of the Richmond, Nicholasville, Irvine & Beattyville Railway Company and also that the officers of complainant had without authority and unlawfully actually endorsed the absolute guarantee of the complainant upon $1,185,000 of such bonds and that the defendants owned and held in possession divers of such bonds bearing what purported to be the endorsement and guarantee of the complainant, and it thereupon prayed for the cancellation of such unlawful contract and guarantees and pending final hearing that an injunction might be granted by the court restraining each of the defendants from suing on such endorsements or selling, encumbering or parting with the possession of any of such guaranteed bonds or sending them out of the jurisdiction and for other relief.

Thereafter process to appear and answer in the premises was duly served upon each and every of the defendants whose names have been hereinbefore at large recited and an answer has been filed in substance admitting the material allegations of the complainant's bill, and replication has been filed to each answer.

On the filing of such bill, a temporary restraining order was granted against disposing of or encumbering any of the said guaranteed bonds or sending the same out of the jurisdiction and afterwards on notice and full hearing on May 28, 1890, an injunction was granted to like effect, which order of court is still in full force.

Thereafter a stipulation in writing was filed in the cause wherein it is admitted that the guarantee on such bonds purporting to bind the complainant was executed by its then officers without any vote of or authority from the stockholders of complainant.

On October 3, 1891, a decree was entered in said cause cancelling the guarantee of complainant on the bonds of said Richmond, Irvine & Beattyville Railway Company numbered from 601 to 675 both inclusive and such bonds were produced in open court and stamped in accordance with such decree of cancellation, which decree is in full force and effect.

On November 4, 1891, a like decree of cancellation was entered herein cancelling such guarantees upon the bonds of said issue numbered 676 to 767 both inclusive, and such bonds were

69 produced in open court and stamped in accordance with such decree of cancellation which decree is still in full force and effect.

Complainant further shows that on January 28th, 1893, it filed its supplemental bill herein in which it alleged that since the institution of the action the work of construction on the said Richmond, Nicholasville, Irvine & Beattyville railway had wholly ceased and that such company had become hopelessly indebted and insolvent and that the Central Trust Company, the trustee in said first mortgage, has brought suit in this court against said railway company to foreclose said mortgage and sell the said railway company, and that for many months all of the mortgaged property has been in the possession of and operated by John MacLeod as the receiver of this court.

That on November 13th, 1891, in accordance with and in execution of the conditions in said trust deed contained the holders and owners of 2,261 bonds secured thereby being more than a majority thereof, served a written notice by them signed upon the said Central Trust Company declaring that for default in payment of an installment of semi-annual interest they elected to declare the entire principal of said $2,375,000 of mortgage bonds issued by said Richmond, Nicholasville, Irvine & Beattyville Railway Company to be at once due and payable and ordered said trust company to proceed to enforce the collection of the principal and interest of all such bonds by the foreclosure of said mortgage and sale of the property.

Complainant filed with said first supplemental bill a certified copy of the bondholders' declaration as Exhibit A, and prayed that the same might be taken as a part of the supplemental bill.

Complainant showed that by the publication of the deposition of a witness taken for use in such foreclosure proceeding it had within less than ten days of that date become informed of the names of the principal holders of the bonds bearing its unauthorized and unlawful guarantee and on such information as the complainant derived therefrom and believed to be true the complainant charged that of the total issue of 2,375 bonds of $1,000 each issued by the said Richmond, Nicholasville, Irvine & Beattyville Railway Company, certain persons therein named and made parties were the owners and holders of such bonds and coupons.

Complainant charged that nearly all of the uncancelled 1,106 of its pretended guarantees on such bonds were held by each and every of the parties named therein, and that they and each of them
70 do give and pretend that the said illegal and unauthorized guarantees purporting to be executed by complainant were valid and binding, and alleged that one Hollman had within a month prior thereto instituted suit in the common pleas court of Jefferson county, Kentucky, against complainant seeking to enforce its liability as such guarantor upon divers coupons attached to ten of said bonds, which he averred belonged to him and that process had been served upon the complainant, and that such cause was then pending in said State court.

Complainant shows that upon the filing of said supplemental bill

this court granted to it an injunction restraining the parties named therein from selling, transferring, pledging, encumbering or in any way parting with the possession of any of the bonds held by them bearing thereon the pretended endorsement of the complainant or any of the coupons belonging to any such endorsed bonds, and further restraining them and each of them from sending any such bonds or coupons out of the jurisdiction of the court, or from bringing or prosecuting any suit against the complainant to enforce such pretended guarantee against it.

Complainant alleges that at the time it filed its first supplemental bill it made parties thereto all persons who within the knowledge or information of complainant owned or held any of said bonds. Complainant says that it has within the last few days as owner or in pledge to secure debt — a number of the said bonds bearing thereon the pretended endorsement of complainant, and that also each hold a number of the said bonds bearing thereon the pretended endorsement of complainant.

Complainant further shows that W. C. Nones has instituted within the last two weeks, and that on November 23rd, 1893, W. H. Dillingham, J. H. Leathers, Mrs. S. F. Forrester, M. A. Huston, Ben. C. Weaver, Jr., R. L. Whitney, R. Whitney, A. Schwabacker, S. A. Cannon, Burton A. Duerson, W. M. Charlton, J. A. Shuttleworth, A. J. Ross, John T. Bate, Jr., and Allen R. White instituted in the Jefferson circuit court of Kentucky fifteen different suits against complainant seeking to enforce its liability as such alleged guarantor upon divers coupons attached to a number of said bonds which each of them claim to own and possess, and process has issued against the complainant.

Each and every of such persons and corporations are citizens of the State of Kentucky resident within this district, and each and every of the bonds and coupons thereto belonging so owned
71 or held by the said persons and corporations are now in the city of Louisville and subject to the process and injunction of this court, each of said parties are giving out and pretending that the said illegal and unauthorized guarantees purporting to be executed by complainant are valid and binding upon it and enforcible against its property.

Complainant avers that before the bringing of their respective suits each and every of the defendants hereto had actual knowledge of the filing of the original and supplemental bill and the objects and purposes of each and of the orders of this court entered upon each.

The complainant further avers that the controversy as to the validity of said contract dated May 9th, 1889, and of its pretended guarantees for the principal and interest of the 1,185 bonds of the issue hereinbefore specified is within the primary and exclusive jurisdiction of this court, and that it is entitled to the further benefit and enforcement of the decrees of cancellation hereinbefore entered in this cause until the entire 1,185 pretended guarantees of complainant are brought into court and cancelled, and that to allow the said present holders of such pretended and disputed guarantees

to alien or encumber or part with the possession of any of such bonds bearing thereon such pretended guarantees or to allow them to bring common-law suits on the constantly maturing coupons will tend to the great fraud and injury of complainant and will create a great multiplicity of suits and increase of cost and expense.

Complainant avers that all the allegations contained in the original bill of complaint and in the first supplement thereto are true as therein set forth, and it therefore prays that leave be granted to file this supplemental bill; and that the above-named Kentucky National Bank, W. H. Dillingham, J. H. Leathers, Mrs. S. F. Forrester, M. A. Huston, Ben. C. Weaver, R. L. Whitney, R. Whitney, A. Schwabacker, S. A. Cannon, Burton A. Duerson, W. M. Charlton, J. A. Shuttleworth, A. J. Ross, John T. Bate, Jr., Allen R. White and W. C. Nones be made parties defendant hereto, and that due process issue to compel them to appear and answer the original —, the first supplemental bill, and this supplemental bill, but without oath, and that on final hearing the complainant be granted all and singular the relief prayed in and by its original bill as well *as* against those made parties defendants hereby and by the first supplemental bill as the original defendants, and especially prays that the court will forthwith issue its order restraining each and every of the persons and corporations now made defendants to this bill of
72 supplement from selling, transferring, pledging, encumbering in any way or parting with the possession of any of the railroad bonds issued by the Richmond, Nicholasville, Irvine & Beattyville Railway Company and bearing thereon the pretended endorsement of the complainant or any of the coupons belonging to any of such endorsed bonds, and further restraining them and each of them from sending any of such bonds or coupons out of the jurisdiction of this court or bringing or prosecuting any suit against the complainant to enforce such pretended guarantees against it, and for all such further relief as may be equitable.

LOUISVILLE, NEW ALBANY & CHICAGO RAILWAY COMPANY, *Complainant.*

HENRY CRAWFORD &
W. R. CRAWFORD, *Solicitors.*
HELM & BRUCE, *Solicitors.*

STATE OF KENTUCKY, }
County of Jefferson, } *ss:*

W. H. Newman, on oath says he is the general agent of the complainant, The Louisville, New Albany & Chicago Railway Company and has full and particular knowledge concerning the matters in controversy, that he has read the foregoing supplemental bill, knows the contents thereof, and that the matters therein set forth are true to the best of his knowledge, information and belief.

W. H. NEWMAN.

Subscribed and sworn to before me this 29th day of November, 1893.

M. McLAUGHLIN,
N. P. J. C., Ky.

Exhibit "A," filed with first supplemental bill, is as follows:

Whereas, the Richmond, Nicholasville, Irvine & Beattyville Railroad Company on July 1st, 1889, made and delivered to the Central Trust Company of New York, trustee, a deed of trust or mortgage conveying the railroad properties and franchises of such railroad company to the said trust company, to secure an issue of $2,375,000 of such railroad company's bonds, and it was provided that if any of the interest coupons secured by the said deed of trust should remain unpaid more than six months after they should have become due and should have been presented and payment thereof demanded at the place where they are payable, the principal sum mentioned in each and all of the bonds secured
73 thereby and then outstanding and unpaid, become forthwith due and payable; and it was further provided that said option should be exercised by a written notice thereof, given to the said trustee and should take effect and cause the principal of said bonds to become due as soon as such notice should be served upon the trustee.

And whereas, the said coupons were payable at a designated agency of the said company in the city of New York, and the said company neglected and failed to designate any such agency and refused to pay any of the coupons attached to the said bonds and which became due on January 1, 1891, and also on those which became due on July 1, 1891, although coupons which fell due at such dates were presented to the said company and payment thereof demanded.

Now, therefore, the undersigned holders of the amount of the said issue of bonds set opposite their respective names and aggregating more than a majority of all such bonds now outstanding, do hereby exercise their option to have the principal of such bonds become forthwith due and payable, and do hereby give notice to the trustee thereof; and in case any of the said bonds or coupons shall remain unpaid after the principal shall have become due as above provided, the undersigned request the said trustee in accordance with the provisions of such deed of trust to enter upon and take immediate possession by themselves or the authorized agents of all and singular the said mortgaged premises and every part thereof, and to hold, use and operate the same in accordance with the terms of such mortgage, and further request the said trustee to institute proceedings in some court having jurisdiction for a foreclosure of the lien created by the said deed, the appointment of a receiver and a judicial sale of the mortgaged premises; and the said undersigned holders of such bonds do hereby agree to indemnify and hold harmless, the said trustee from any loss or damage on account of costs, counsel fees and other expenses of such litigation.

In witness whereof, the undersigned have hereunto set their hands this 13th day of November, 1891.

Ohio Valley Improvement and Contract Company, by A. E. Richards, president, 1,194 bonds, $1,194,000.

Vernon D. Price, 16 bonds $16,000.

The Louisville Trust Company, by H. V. Loving, president, 571 bonds collateral.

A. E. Richards, 15⅓ bonds $15,333⅓.

Bennett H. Young, 10⅓ bonds $10,333⅓.

Bennett H. Young, 55 collateral.

J. W. Stine, 18 bonds $18,000.

74 The Louisville Trust Company, assignee of Cornwall & Bro., by H. V. Loving, president, 8 bonds.

The Louisville Trust Company, assignee of Wm. Cornwall, Jr., by H. V. Loving, president, 10 bonds.

Thos. W. Bullitt, 16 bonds; also Thos. W. Bullitt, 3½ bonds.

Theodore Harris, 30 bonds.

Louisville Banking Company, holding as collateral, 161 bonds.

Dennis Long, 10 bonds.

Columbia Finance and Trust Company, by E. T. Halsey, president, as collateral, 75 bonds; in trust, 68 bonds.

A copy.

Witness my hand and seal of said court this 25th day of January, 1893.

[SEAL.] THOS. SPEED, *Clerk.*

And on the 4th day of May, 1894, came the parties by their counsel and the Louisville Banking Company by counsel and filed their stipulation herein:

Which is as follows:

Circuit Court of the United States for the District of Kentucky.

LOUISVILLE, NEW ALBANY & CHICAGO RAILWAY COMPANY
vs.
THE OHIO VALLEY IMPROVEMENT & CONTRACT COMPANY.

Stipulation.

It is agreed between the parties hereto that the contract between the Louisville, New Albany & Chicago Railway Company and the Ohio Valley Improvement & Contract Company filed with a bill of complaint herein and the endorsement of the bonds by the former of the Richmond, Nicholasville, Irvine & Beattyville Railroad Company, were executed upon the sole authority of the board of directors of the Louisville, New Albany & Chicago Railway Company, and that no petition of any of the stockholders of the said company requesting said endorsement in the manner pointed out by section 3951 A, B, C of the Statutes of Indiana or in any other manner was ever signed or executed and no authority was conferred by said stockholders upon such directors and such directors had only such authority as existed by virtue of their existence as such directors.

It is further agreed that the guaranteed bonds referred to, numbered from 1 to 600 inclusive were endorsed with such guarantee by the officers of the Louisville, New Albany & Chicago Railway

Company on the — day of December, 1889; that 585 of such bonds numbered from 601 to 1185 inclusive were so endorsed and delivered on the 11th of March, 1890, that the regular meeting of the stockholders of the Louisville, New Albany & Chicago Railroad Company convened on the next day, March 12th, 1890, and no meeting had been held after the above contract of guarantee had been entered into until such regular meeting was held on the 12th day of March, 1890, and on which day, a majority of the board of directors were changed and such meeting then adjourned to the 22nd day of March, 1890; that at such adjourned meeting the board of directors reported to the stockholders that the before-mentioned bonds
75 had been guaranteed and a resolution was adopted by a majority of all the outstanding stockholders objecting thereto and disclaiming any liability by reason of such guarantee.

It is further agreed that the affidavits of John A. Hilton and exhibits thereto, John B. Carson, William Dowd, Elihu Root, R. R. Hitt, Jewell Erhardt, heretofore filed in this case may be deemed as properly taken depositions and may be read, subject to such exceptions for irrelevancy and incompetency as if they were depositions.

ST. JOHN BOYLE,
Att'y for B. H. Young, B. Hollman, W. C. Nones, and Lou. Trust Co.

NOBLE & SHERLEY,
Counsel for R. H. Dillingham, Jno. T. Bate, Jr., A. J. Ross, W. M. Charlton, A. Schwabacher, R. Whitney, M. A. Huston, Jno. H. Leathers, Allen R. White, J. A. Shuttleworth, Burton A. Duerson, S. A. Cannon, R. L. Whitney, Ben. C. Weaver, Jr., Mrs. S. F. Forrester.

HUMPHREY & DAVIE,
Att'ys for Ky. Nat'l Bank.

BENNETT H. YOUNG,
Att'y for J. W. Stine.

And on another day, to wit, on the 8th day of May, 1894, came the parties by their counsel and on their motion it is ordered that the depositions herein be opened and published. Came also Theodore Harris and the Louisville Banking Company by counsel and filed separate exceptions to the deposition of J. A. Hilton, taken in New York city March 28, 1894.

Which exceptions are as follows, respectively, to wit:

United States Circuit Court for the District of Kentucky.

LOUISVILLE, NEW ALBANY & CHICAGO RAILWAY COMPANY, Plaintiff, *vs.* OHIO VALLEY IMPROVEMENT & CONTRACT COMPANY, &c., Defendants.	6075. Exceptions of Theodore Harris to the Deposition of J. A. Hilton.

The defendant, Theodore Harris, objects and excepts to
76 the following portions of the deposition of J. A. Hilton, taken in New York city on March 28, 1894, to wit:

1. To the third, fourth, fifth, sixth, seventh, eleventh, twelfth, thirteenth and fourteenth questions, and to the several answers thereto, because said questions and answers are each and all incompetent as evidence against this defendant, and are irrelevant.

2. To the fourteenth question and answer thereto, because said answer purports to give only an extract from the minutes of the meeting of March 22, 1890, and does not give or purport to give the minutes of said meeting in full, and said extract is incompetent against this defendant.

3. To said deposition as a whole, because facts therein testified to are incompetent and irrelevant as against this defendant, a *bona fide* purchaser of a portion of said bonds for value without notice of the alleged facts testified to in said deposition; and

4. This defendant moves to suppress and exclude said deposition, because the facts therein testified to are incompetent and irrelevant as against this defendant, a *bona fide* purchaser of a portion of said bonds for value and without notice of said alleged facts testified to in said deposition.

BARNETT, MILLER & BARNETT,
Solicitors for Theodore Harris.

United States Circuit Court for the District of Kentucky.

LOUISVILLE, NEW ALBANY & CHICAGO RAILWAY COMPANY, Plaintiff, *vs.* OHIO VALLEY IMPROVEMENT & CONTRACT COMPANY, &c., Defendants.	6075. Exceptions of Louisville Banking Co. to the Deposition of J. A. Hilton.

The defendant, Louisville Banking Company, objects and excepts to the following portions of the deposition of J. A. Hilton, taken in New York city on March 28, 1894, to wit:

1. To the third, fourth, fifth, sixth, seventh, eleventh, twelfth, thirteenth and fourteenth questions, and to the several answers thereto, because said questions and answers are each and all incompetent as evidence against this defendant, and are irrelevant.

77 2. To the fourteenth question and answer thereto, because said answer purports to give only an extract from the minutes of the meeting of March 22, 1890, and does not give or purport to give the minutes of said meeting in full, and said extract is incompetent against this defendant.

3. To said deposition as a whole, because facts therein testified to are incompetent and irrelevant as against this defendant, a *bona fide* purchaser of a portion of said bonds for value without notice of the alleged facts testified to in said deposition; and

4. This defendant moves to suppress and exclude said deposition, because the facts therein testified to are incompetent and irrelevant as against this defendant, a *bona fide* purchaser of a portion of said bonds for value and without notice of said alleged facts testified to in said deposition.

BARNETT, MILLER & BARNETT,
Solicitors for Louisville Banking Co.

The replication of complainant referred to is as follows:

Circuit Court of the United States, District of Kentucky.

LOUISVILLE, NEW ALBANY & CHICAGO RAILWAY COMPANY, Complainant,
vs.
OHIO VALLEY IMPROVEMENT & CONTRACT COMPANY, &c., Defendant.

Replication of the complainant, The Louisville, New Albany & Chicago Railway Company, to the answer herein of the defendant, The Kentucky National Bank.

(Replication omitted by stipulation.)

And afterwards, to wit, on the 11th day of September, 1894, this cause came on to be heard, as to the defendants, The Ohio Valley Improvement & Contract Company, The Louisville Trust Company, W. C. Nones, Theodore Harris, The Louisville Banking Company, S. A. Cannon, William M. Charlton, A. Schwabacher, James A. Shuttleworth, W. A. Huston, W. H. Dillingham, S. F. Forrester, R. L. Whitney, B. A. Duerson, John T. Bate, Jr., John H. Leathers, A. J. Ross, Ronald Whitney, Allen R. White, Ben. C. Weaver, Kentucky National Bank, The Louisville Trust Company, assignee of Cornwall & Brother, and The Louisville Trust Company, assignee of William Cornwall, Jr., B. Hollman, Dennis Long, Vernon D. Price, John W. Stine and Bennett H. Young.

The complainant read upon the hearing the bill with the exhibits filed therewith, the supplemental bill filed January 28th, 1893, with the exhibits filed therewith, and the supplemental bill filed December 2nd, 1893, and exhibits therewith filed, and the replications to the several answers filed by the said defendants.

Complainant also read articles of consolidation between the Louisville, New Albany & Chicago Railway Company and the Chicago & Indianapolis Air Line Railway Company which was filed in court July 10th, 1894, under a stipulation between the parties.

Complainant also read upon the hearing the stipulation between it and the defendant The Ohio Valley Improvement & Contract Company, which said stipulation was filed February 16, 1891,
78 and also the stipulation between the complainant and the defendants, B. H. Young, B. Hollman, W. C. Nones, The Louisville Trust Company, W. H. Dillingham, John T. Bate, Jr., A. J. Ross, W. M. Charlton, A. Schwabacher, R. Whitney, M. A. Huston, John H. Leathers, Allen R. White, Ben. C. Weaver, S. F. Forrester, Kentucky National Bank and J. W. Stine, which said stipulation was filed May 8th, 1894.

Complainant also read under the last stipulation mentioned the affidavit of John A. Hilton, and the exhibits filed therewith, and also the deposition of said John A. Hilton with the exhibits therewith filed, which said deposition was filed in court March 28th, 1894.

Complainant also read depositions of H. V. Loving, Attilla Cox, A. E. Richards, B. H. Young, L. V. Cassilly, Theodore Harris, William G. Wetterer filed in court March 25th, 1893.

The defendants read their several answers and the answer of the defendant, The Ohio Valley Improvement & Contract Company, def't Hollman by agreement read his answer as if it were a deposition. All of the defendants herein read under the terms of the stipulation hereinbefore mentioned the affidavits of William Dowd, John B. Carson, R. R. Hitt, Elihu Root, and Joel B. Erhardt; and also the deed from the National Bank of Cincinnati to the complainant; and the deed from Richard Giltenan to the complainant and a copy of the record in the cause of The Louisville, New Albany & Chicago Railway Company against John D. O'Leary, and a copy of the record in the case of Lizzie Woods *vs.* The Louisville, New Albany & Chicago Railway Company. And the defendant, The Louisville Trust Company, read the deposition of H. V. Loving; and the defendant, W. C. Nones, read his own deposition; and the following defendants read their own depositions in their own behalf: Burton A. Duerson, Allen R. White, M. A. Huston, A. J. Ross, J. A. Shuttleworth, W. H. Dillingham, S. A. Cannon, S. F. Forrester, A. Schwabacher, R. L. Whitney, John H. Leathers, John T. Bate, Jr., R. Whitney, Ben. C. Weaver, W. M. Charlton, Theodore Harris, and The Louisville Banking Company read said deposition of Theodore Harris in its behalf. And all of the defendants read the papers and documents mentioned and described in the written stipulation this day filed.

And the court being now advised filed its opinion and it is considered that the guaranty endorsed on the bonds of the Richmond, Nicholasville, Irvine & Beattyville Railroad Company in the name of the complainant was so endorsed without authority, and
79 the same is void; and the said defendants heretofore named are hereby directed to produce the bonds of the said Richmond, Nicholasville, Irvine & Beattyville Railroad Company in their possession, or in which they have an interest bearing the endorsed guaranty aforesaid of the Louisville, New Albany & Chicago Railway Company into the court, and the clerk of this court is directed to endorse upon each of said bonds the following entry: "The guaranty herein is cancelled by order of the court."

The said defendants are required to produce said bonds for purpose aforesaid in this court on or before the 15th day of October, 1894, and they and each of them are perpetually enjoined and restrained from selling, alienating or parting with the possession of any of said bonds until said guaranty has been cancelled in the manner hereinabove described.

It is further ordered, adjudged and decreed that the complainant recover of the several defendants herein its costs in this behalf expended, the cost of the taking of the deposition of John A. Hilton, which said deposition was returned in court the 25th of March, 1894, to be specially taxed against defendants Theodore Harris and The Louisville Banking Company, and not taxed against the other defendants.

The stipulation referred to is as follows:

United States Circuit Court for the District of Kentucky.

THE LOUISVILLE, NEW ALBANY & CHICAGO RAILWAY COMPANY
vs.
THE OHIO VALLEY IMPROVEMENT & CONTRACT COMPANY.

It is agreed and stipulated that on the hearing of this cause the defendants read a copy of a mortgage executed by the complainant, The Louisville, New Albany & Chicago Railroad Company, to the Farmers' Loan & Trust Company and W. M. Lewis dated March 24th, 1884, and which said mortgage begins with this recital:

"This indenture made and entered into this twenty-fourth day of March, one thousand eight hundred and eighty-four, by and between the Louisville, New Albany & Chicago Railway Company, a corporation duly created and existing under the laws of the
80 State of Indiana and Kentucky, party of the first part, and the Farmers' Loan & Trust Company a corporation duly created and existing under the laws of the State of New York and W. M. Lewis of New Albany in the State of Indiana hereinafter called the trustee parties of the second part."

And also contains a description of the property embraced in said mortgage, a part of which description is as follows: "All the railway of the party of the first part in the city of Louisville in the State of Kentucky and extending from New Albany on the Ohio river and running through the counties of Floyd &c. in said State of Indiana and Jefferson county in said State of Kentucky."

And the defendants also read a copy of the lease executed by the Louisville Southern Railroad Company to the Louisville, New Albany & Chicago Railroad Company and which said lease contains the following provisions:

"This agreement, made the tenth day of December, one thousand eight hundred and eighty-eight, by and between the Louisville Southern Railroad Company, hereinafter designated the Southern Company, a corporation organized and existing under the laws of the State of Kentucky, party of the first part, and the Louisville, New Albany & Chicago Railway Company, a corporation organized and existing under the laws of the State of Indiana and of the State of Kentucky, hereinafter designated as the New Albany Company, party of the second part, witnesseth:

Whereas, the Southern Company owns and is operating a railroad in the State of Kentucky extending from Louisville, via Shelbyville, Lawrenceburg and Harrodsburg to Burgin, on the Cincinnati Southern railroad and by the terms of an agreement dated the 21st day of June, 1887, between said Southern Company and the Kentucky & Indiana Bridge Company, the said Southern Company has an entrance into the city of Louisville to a point of connection with the Short Route Railway Transfer Company and an extension of its line over the bridge of said bridge company to the Indiana line upon the terms and conditions set forth in said contract, a copy of which will be attached hereto as part hereof, and the New

Albany Company has constructed, owns and operates a railroad through Indiana which meets and connects as aforesaid with said Louisville Southern railroad at said Indiana line, and the New Albany Company desires to contract for the use of said Louisville Southern railroad, and it is the mutual interest of the parties
81 to make a consolidation of business interests and franchises in the manner and to the extent herein set forth." And the defendants also read a mortgage executed January 1st, 1886, by the Louisville, New Albany & Chicago Railway Company, to the Farmers' Loan & Trust Company, John H. Barker, trustee, and which said mortgage contains the following provisions:

"This indenture, made and entered into this first day of January, one thousand eight hundred and eighty-six, by and between the Louisville, New Albany & Chicago Railway Company, hereinafter called the railway company, a corporation duly created and existing under the laws of the States of Indiana and Kentucky, party of the first part, and the Farmers' Loan & Trust Company, a corporation duly created and existing under the laws of the State of New York, and John H. Barker, of Michigan City, in the State of Indiana, hereinafter called the trustees, parties of the second part:

"Whereas, the party of the first part owns and is operating a railroad in the State of Indiana, which is composed of a line from New Albany, on the Ohio river, to Michigan City, on Lake Michigan, hereinafter called the main line, and a line from Indianapolis to a junction with the Chicago and Western Indiana railroad, at a point on the State line between Indiana and Illinois, about twenty miles southwest of Chicago, hereinafter called the air line, together with certain proprietary and leasehold interests in the franchises and railroad of the said Chicago and Western Indiana Railroad Company, and in the terminal facilities of the said company in the city of Chicago, and certain terminal rights, facilities and approaches in the other cities above mentioned, and in the city of Louisville, in the State of Kentucky, and between said city of Louisville, and in the city of New Albany:

"Now, therefore, this indenture witnesseth, that the Louisville, New Albany & Chicago Railroad Company, party of the first part, in consideration of the premises and of one dollar to it in hand paid, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, assigned, set over, released, conveyed, and confirmed, and by these presents doth grant, bargain, sell, assign, set over and release, convey, and confirm unto the Farmers' Loan & Trust Company and John H. Barker, parties hereto of the second part, and to the survivor of them, and to their successor or successors in the trust herein and hereby created and declared, all the railway of the party of the first part in the city of Louisville, in the State of
82 Kentucky, and extending from New Albany on the Ohio river to Michigan City in the State of Indiana, and from the city of Chicago in the State of Illinois, to the Indiana State line, under a leasehold right, and from said State line to the city of Indianapolis in the State of Indiana, including the railway lying and

being in all of said cities, and terminal rights and facilities and approaches thereto, the same being about four hundred and seventy-five miles in length, and running through the counties of Floyd, Clark, Washington, Orange, Lawrence, Monroe, Owen, Putnam, Montgomery, Tippecanoe, White, Pulaski, Stark, La Porte, Marion, Hamilton, Boone, Clinton, Carroll, Jasper, Newton, and Lake, in said State of Indiana, and Jefferson county, in said State of Kentucky, and Cook county, in said State of Illinois."

And the defendants also read a copy of the record of a suit filed in Floyd county, Indiana, by Lizzie Woods *vs.* The Louisville, New Albany & Chicago Railroad Company and which record contained a petition by the said railroad company for the removal of the said action to the United States circuit court and which petition is as follows (which has been heretofore copied into this record).

And also another petition for the removal thereof filed in the said cause and which is as follows: (Has been heretofore copied into this record.)

And the defendants also read a copy of the record in the proceedings filed February 27th, 1887, in the Jefferson county court, State of Kentucky, by the complainant, The Louisville, New Albany & Chicago Railroad Company against John D. O'Leary to condemn for railway purposes certain real estate in the city of Louisville and State of Kentucky in which the following clause appears.

The Louisville, New Albany & Chicago Railway Company states that "it is a corporation and that it is duly empowered by its charter by an act of the General Assembly of the Commonwealth of Kentucky to purchase lease or condemn in said State such real estate as may be desired for railways &c. and to construct and operate a railroad in said State."

The said petition describes the land sought to be condemned as situated in the city of Louisville and State of Kentucky and such proceedings were had therein that the said land was condemned and the compensation paid therefor by the said complainant.

It is agreed that the foregoing extract contains all of such instruments and papers as is material and the remainder is omitted because it is immaterial.

ST. JOHN BOYLE,
Att'y for Louisville Trust Co. & W. C. Nones.
HELM & BRUCE,
For Complainant.

83 THE LOUISVILLE, NEW ALBANY & CHICAGO RAILROAD COMPANY *vs.* THE OHIO VALLEY IMPROVEMENT & CONTRACT COMPANY *et al.* } Opinion.

The decision of Justice Brewer and Judge Jackson, after full consideration, that this court had jurisdiction of this cause and the granting of an injunction should, we think settle for this court some of the questions argued by counsel.

This decision determined that the complainant is an Indiana corporation and not a Kentucky one; hence, whatever authority the complainant had or has to guarantee the mortgage bonds issued by the R. N. I. & B. R. R. Co. is derived from the corporate powers granted by that State. It also determined that upon the then showing the complainant was entitled to an injunction to prevent the disposition by the O. V. I. & C. Company and others of the bonds of the Beattyville Railway Company with the guarantee of the complainants upon them. The subsequent orders entered by this court cancelling the complainant's guarantee on those bonds held by the Ohio Valley Contract Company were judgments against the validity of those guaranties but as those orders were made without discussion other than given the cause when the injunction was granted it is proper this court should consider the general question of authority to make those guaranties as well as the right of *bona fide* holders of the bonds for value without notice of any deficit in, or want of authority to execute the guaranty. This will be done briefly.

The consideration for the guaranty on the coupon bonds of the Beattyville Railway Company was to be the delivery of three-fourths (¾ths) of the capital stock of that railway company to complainant by the Ohio Valley Contract Company.

These bonds had been issued by the Beattyville Railway Company and were to be delivered to the contract company as the Beattyville Railway Company was constructed.

The guaranty which was endorsed on $1,185,000 of bonds is as follows:

"For value received, the Louisville, New Albany & Chicago Railway Company hereby guarantees to the holder of the within
84 bond the payment by the obligor therein of the principal and interest thereof, in accordance with the terms thereof. In witness whereof, the said railway company has caused its porate name to be signed hereto by its president and its seal be attached by its secretary."

The authority to guarantee the payment of mortgage coupon bonds of another railway company does not arise or can it be implied from the general business of complainant, either in constructing or operating its railroad, but is an authority which must be given to it as a railroad corporation by the State expressly or be clearly implied from other corporate powers granted to such a corporation.

The provisions of the Indiana statute upon the subject of guaranty of bonds of another company are as follows:

"3951*a*. Guaranty of bonds of another company.—The board of directors of any railway company organized under and pursuant to the laws of the State of Indiana, whose line of railway extends across the State in either direction, may, upon the petition of the holders of a majority of the stock of such railway company, direct the execution by such railway company of an indorsement guaranteeing the payment of the principal and interest of the bonds of any railway company organized under or pursuant to the laws of any ad-

joining State, the construction of whose line or lines of railway would be beneficial to the business or traffic of the railway so indorsing or guaranteeing such bonds.

"3951*b*. Petition of stockholders.—2. The petition of the stockholders specified in the preceding section of this act shall state the facts relied on to show the benefits accruing to the company indorsing or guaranteeing the bonds above mentioned.

"3951*c*. Limitation of the power.—3. No railway company shall, under the provisions of this act, indorse or guarantee the bonds of any such railway company or companies, as is above mentioned, to an amount exceeding one-half of the par value of the stock of the railway company so indorsing or guaranteeing as authorized under this act."

It is quite clear from this record that no effort was made by the board of directors of the complainant or any one else to conform to the provisions of this statute in regard to a petition of the holders of the majority of stock in complainant's company, and that the order of the board, directing the president and secretary to guarantee these bonds, was without the approval or petition of a majority or any of the stockholders. The provisions of the Indiana statute seem to have been ignored and the guaranty made
85 presumably under the supposed authority of an act of the State of Kentucky approved April 7th, 1882. But as complainant is not a Kentucky corporation this guaranty cannot be sustained or aided by this statute.

It will be observed that the board of directors are authorized by the Indiana statute quoted, to guarantee the bonds of another company only when and upon the petition of the holders of a majority of the stock of their company. The stockholders and not the board of directors are to take the initiative and a majority thereof determine whether there shall be a guaranty of the bonds of another company. The board of directors may decide whether a majority has petitioned them so as to authorize a guaranty, and may determine the manner of the endorsement of guaranty and the proper mode of executing the power given them by the petition of the holders of a majority of stock, but the authority does not exist except by and through the stockholders. The provision of this statute which requires the facts which are relied on to show the benefit accruing to the company endorsing or guaranteeing the bonds to be stated in the stockholders' petition, clearly shows the authority to guarantee the bonds of another company was not intended to be given the board of directors.

There is no question here as to the effect of a subsequent approval or ratification of the guaranty of these bonds by the board of directors, by the stockholders as their action was promptly repudiated by them the first meeting after the guaranty was made and presumably as soon as it was practical to have had a stockholders' meeting.

It is insisted that there are other provisions of the statute of Indiana which grant to railway corporations organized in that State

under its laws, corporate powers that authorize guaranties such as made here in the execution of those powers.

These powers are such as to consolidate with other railroad companies and to buy and lease by way of extension of their railway lines, other railroads, &c., but the authority to guarantee the bonds of another railroad company is given in express terms in section 3951 and the mode prescribed, and we think this precludes any implied authority arising to guarantee bonds in cases covered by that section in the exercise of other corporate powers given in other parts of the statute.

Those parts of the statutes might be pertinent to show corporate authority to buy the stock of the Beattyville Railway Company, but as the consideration thereof was the guaranty of the payment
86 of said company's coupon bonds, this guaranty could not be given by the action of the board of directors alone without the petition of stockholders as directed by section 3951.

In Thomas *vs.* Railroad Co., 101 U. S, the Supreme Court by Justice Miller says:

"We take the general doctrine to be in this country, though there may be exceptional cases and some authorities to the contrary, that the powers of corporations organized under legislative statutes are such and such only as those statutes confer. Conceding the rule applicable to all statutes, that what is fairly implied is as much granted as what is expressed, it remains that the charter of a corporation is the measure of its powers, and that the enumeration of these powers implies the exclusion of all others."

And in the case of The Central Transportation Co. *vs.* Pullman Palace Car, 139 U. S. 48, Justice Gray, after reviewing the cases in the Supreme Court, says: "The clear result of these decisions may be summed up thus: The charter of a corporation, read in the light of any general laws which are applicable, is the measure of its powers, and the enumeration of those powers implies the exclusion of all others not fairly incidental. All contracts made by a corporation beyond the scope of those powers are unlawful and void, and no action can be maintained upon them in the courts, and this upon three grounds: the obligation of every one contracting with a corporation, to take notice of the legal limits of its powers; the interest of the stockholders, not — be subjected to risks which they have never undertaken; and above all, the interest of the public; that the corporation shall not transcend the powers conferred upon it by laws."

This court and the circuit court of appeals of this (6th) circuit have recently considered the question of the corporate right of the Kentucky Union Land Company to guarantee the payment of the coupon bonds of the Kentucky Union Railway Company and have sustained the land company's authority to make the guaranty, but this was upon a construction of the powers given in the charter of that company, especially the power to engage in the business of transportation and to consolidate with any railroad company chartered or to be chartered. See Tod *vs.* Ky. Union Land Co. 57 Fed.

Rep. 48. Marbury & Jones *vs.* Ky. Union Land Co. Oct. term, 1893.

The doctrine as announced by the Supreme Court through Justices Miller and Gray as to the extent and the limitations of corporate powers when applied to this case is, we think, conclusive, if
87 our construction of the Indiana statute is correct, against the right of the board of directors of complainant's company to enter into the contract of October 1889, and subsequently to guarantee the bonds of the Beattyville Railway Company. As between the complainant and the Ohio Valley Contract Company the guaranty on the Beattyville Railway Company is invalid. See also Pearce *vs.* M. & I. R. R. Co., 21 How. 441; Penn. Co. *vs.* St. Louis Alton &c., R. R. Co., 118 U. S. 307; Coleman *vs.* Eastern Counties Rwy. Co., 10 Beaven p. 1; East Anglian Rwy. Co. *vs.* Eastern C. Rwy. 11—C. B. 775: Davis *vs.* Railroad Co. 131 Mass. 258; Marble Co. *vs.* Haney 92 Tenn.

Many of the defendants are *bona fide* purchasers and holders of these bonds having bought them on the market for full value with the guaranty upon them and without knowledge or notice of the want of authority by complainant's board of directors to have the guaranty made; and they insist the guaranty is not invalid as against them and should not be cancelled.

The first inquiry upon this branch of the case is the relation which these bondholders have to the guaranty. The guaranty is in terms "to the holder of within bond" and although the Ohio Valley Contract Company was at the time of the endorsement the holder of some of said bonds and the guaranty was made under a contract with that company which was to deliver three-fourths of the capital stock of the Beattyville Railway Company as the consideration thereof, it was evidently the intention of the parties that the guaranty was to be to whoever might be the holder of bond. The guaranty was intended to pass with the bond and such is the legal effect of the endorsement.

But it is insisted that although the legal title to this guaranty passed with the ownership of the bond upon which it is endorsed, yet, by the provisions of the Kentucky statute, the guaranty is subject to the same defenses as exist against the Ohio Valley Contract Company.

The provisions of the Kentucky statute are as follows.:

"All bonds, bills or notes for money or property shall be assignable so as to vest the right of action in the assignee, but, except in case of bills of exchange, not to impair the right to any defense, discount or offset that the defendant has or might have used against the original obligee, or intermediate assignor before notice of the assignment."

Another provision of the statute is as follows:

"Whenever a promissory note is made by the obligor payable to himself or to his order, and is signed on the back thereof by
88 the said obligor and then delivered such signature and delivery shall operate as a promise to pay the face of the note at maturity to the party to whom it shall have been delivered, and

such party may fill up the blank with words of promise, and recover thereon in the same manner as if such party had been named as payee in the note, and such note shall be assignable as are other promissory notes.

Every person who shall sign his name upon the back of a promissory note shall be deemed and treated as an assignor as to the party holding it, unless in writing a different purpose is expressed; the note can legally be placed upon the footing of a bill of exchange." Gen'l Statute chap. 22; sec. 6–13 and 14.

The Code of Practice, section 19, provides, "In the case of an assignment of a thing in action, the action by the assignee is without prejudice to any defense, set-off or defense now allowed * * *. This section does not apply to bills of exchange, nor promissory notes placed upon the footing of bills of exchange, nor to common orders or checks."

These are the only provisions touching the question under consideration. These provisions apply only when an assignment is necessary to pass the title to the thing in action.

That is where the bill, bond or note had an obligee other than the party suing and from whom he gets his right of action and — whose name the suit would be brought except for the provisions of the law.

But here the guaranty is not to the Ohio Valley Contract Company or to the order of that company. The obligation of the guaranty is in terms to the holder of each bond and it is to that holder the principal and interest of the bond is guaranteed to be paid if the obligor defaults.

These bonds were intended by the parties to be placed upon the market and sold and they passed to a purchaser by delivery and not by virtue of the statute of assignments enacted by Kentucky. This is by the general commercial law—City of Lexington *vs.* Butler, 14 Wall 382.

The title to the obligation of guaranty passed with the bond without assignment under the statute, because the guaranty was to whoever might be the holder thereof and the holder was, by a *bona fide* delivery. There is no need, therefore, of an assignment under the provisions of the Kentucky statutes. Thus, as no assignment was necessary and there being no assignment, the statute authorizing assignment with reservations as to defenses, &c.,
89 as against an original obligor, has no application. An assignment of the thing in action is necessary only when there can be an original obligee other than the party suing.

This guaranty, if valid, does not place the complainant in the position of a second maker on the Beattyville Railway bonds, nor does it place the company in the position of an endorser of a bill of exchange, but the position is somewhat analogous. An endorser of a bill of exchange agrees to pay if the parties previously bound thereon do not, and he is given legal notice of the default, and here the complainant guarantees the obligor will pay principal and interest of the bond according to its terms.

It is quite unnecessary to review the conflicting authorities upon

this subject. We conclude that as the bonds passed by delivery and the obligation of the guaranty pass- with the bonds, the provision of the Kentucky statute of assignments as to defenses, etc., do not apply. We concur in what was said by Justice Matthews in Davis *vs.* Wells, 104 U. S. "That notwithstanding the contract of guaranty is the obligation of a surety, it is to be construed as a mercantile instrument in furtherance of its spirit and liberally to promote the use and convenience of commercial intercourse." Page 169.

Although this guaranty passed with the bond upon which it was endorsed and inured to the benefit of the holder thereof, the question remains whether the guaranty is valid and enforceable in the hands of a *bona fide* holder for value without notice of the want of authority in the board of directors and its president to make the guaranty.

There are no recitals in this guaranty other than that it is given "for value received," and there can be no estoppel or presumption against the complainant corporation in favor of innocent holders other than that which may arise from the guaranty itself, and the fact these bonds were put upon the market with the guaranty upon them with the consent of the board of directors of complainant.

The guaranty of such bonds was not within the scope of the business of operating a railway, nor could the corporate power to thus guarantee the bonds of another railway company constructing railway in another State be inferred from the usage of railway companies.

The nature of the contract should have been notice to all purchasers to inquire into the corporate powers of the guaranteeing railway company, as it was unusual and outside of the ordinary business of a railway company either in operating or constructing railroads.

90 Purchasers on the bond market were bound to know that the president and board of directors of complainant were not the corporation but its agents, and that the corporate power to guarantee these bonds did not ordinarily exist in the directory. There were no recitals either in the resolution of the board of directors or in the guaranty itself to mislead the purchaser or stay inquiry.

The commercial character of the bond and guaranty thereon did not relieve a purchaser from the risk of the want of corporate authority to execute the guaranty.

In speaking of notes and bonds issued or accepted by an agent, acting under a general or special power, the Supreme Court says: "In each case the person dealing with the agent, knowing that he acts only by virtue of a delegated power, must at his peril, see that the paper on which he relies comes within the power under which the agent acts. And this applies to every person who takes the paper afterwards; for it is to be kept in mind that the protection which commercial usage throws around negotiable paper cannot be used to establish the authority by which it was originally." See

Floyd Acceptances, 7 Wall., 676, and approved in March *vs.* Fulton County, 10 Wall., 683.

It is insisted that as the board of directors of complainant's company had the corporate authority to guarantee these bonds under certain circumstances, these innocent purchasers had a right to presume the necessary conditions existed to confer the authority upon them.

The language of Justice Swayne in Merchants' Bank *vs.* State Bank, 10 Wall., is quoted as a general proposition applicable to all contracts with corporations. Justice Swayne said: "Where a party deals with a corporation in good faith; the transaction is not *ultra vires*—and he is unaware of any defect of authority or other irregularity on the part of those acting for the corporation and there is nothing to excite suspicion of such defect or irregularity, the corporation is bound by the contract, although such defect or irregularity in part exists. If the contract can be valid under any circumstances, an innocent party in such a case has a right to presume their existence, and the corporation is estopped to deny them."

This language is applicable as in that case where the company had the corporate authority to make the contract and the agent who made it was within the general scope of his duties, though not especially authorized to make the contract in controversy, but it cannot be true, broadly stated, else stockholders in corporations would be without the protection of limitations and condi-
91 tions placed upon their corporation by the charter and the State itself would be without the power to prescribe conditions to the exercise of corporate powers or prescribe the mode or agencies by which corporate powers should be exercised.

Here the condition upon which the board of directors had the authority to make the guaranty of the mortgage bonds of another railway company was the request of a majority of the stock of complainant's company and this was to be in the shape of a written petition and the reasons therefor were to be given.

This condition, precedent to the corporate authority of the board of directors, was not performed or attempted to be performed. It may be the board of directors might have had the right to determine whether if a petition of stockholders had been presented it was as required by the statute; as to the number of stockholders and the character of the petition. But there was no action of stockholders at all and there was no recital in the resolution of the board or in the guaranty that there was. We do not, therefore, see that the position of these bondholders who are *bona fide* purchasers without notice is other or different from that of the Ohio Valley Company.

It is earnestly contended that in the instance where the Cleveland, Columbus & Cincinnati Railroad Company guaranteed the payment of the bonds of the Columbus, Piqua & Indiana Railroad Company the Supreme Court has decided the other way in Zabreskie *vs.* Cleveland, Columbus & Cincinnati R. R. Co., 23 How., 381.

There the contest was between a stockholder of the C. C. & C. R. R. Co. and the *bona fide* holders of the guaranteed bonds. The

stockholder seeking to enjoin the payment of the interest on the bonds guaranteed by the guarantor, the C. C. & C. R. R. Co.

There was an effort to sustain the stockholder's suit by allegation of misconduct of one or more of the directors of the C. P. & I. R. R. Co., but the real objection to the guaranty was an alleged want of authority, as the stockholders did not assent thereto by a two-thirds vote before the contract of guaranty was entered into as was required by the statute under which the C. C. & C. R. R. Co. was organized.

It appeared in that case the contract under which the guaranty was to be made, was entered into in March, 1854, and that in the summer of (July) 1854 at a called meeting of the stockholders of the C. C. & C. R. R. Co. the endorsement of guaranty was expressly approved by the stockholders without a recorded dissent. The suing stockholder was present by proxy who verbally dissented, but
92 declined to vote, although his vote would have controlled the meeting.

After this stockholders' meeting these bonds were sold in the market "under an uncontradicted representation of their validity through the votes" at the stockholders' meeting and the bonds were freely purchased upon the representation of the action of the stockholders.

There was no action of the stockholders of the C. C. & C. R. R. Co. repudiating the action of the company in making the guaranty, nor did the suing stockholder take any action to notify or repudiate the action of his company until the fall of 1856 and after the C. P. & I. R. R. Co. had become insolvent. He, in his suit, denied any efficacy to the vote of the stockholders in July, 1854, because the notice was insufficient as to time of notice and the failure to state its purpose and he contended that not more than half of the stock was represented and two-thirds of those that were present did not vote. The court refused to sustain this stockholder's injunction under the circumstances and Justice Campbell in the course of his opinion said: "The observations of Lord St. Leonard's in the House of Lords, (Bargate *vs.* Shortridge, 5 H. L. Ca., 297), in reference to the effect of the conduct of a board of directors as determining the liability of a corporation, are applicable to this corporation, under the facts of this case. 'It does appear to me,' he says, 'that if, by a course of action, the directors of a company neglect precautions which they ought to attend to, and thereby lead third persons to deal together as upon real transactions, and to embark money or credit in a concern of this sort, these directors cannot after five or six years have elapsed, turn round, and themselves raise the objection that they have not taken these precautions, and that the shareholders ought to have inquired and ascertained the matter. * * * The way, therefore, in which I propose to put it to your lordships, in point of law, is this: The question is not whether that irregularity can be considered as unimportant, or as being different in equity from what it is in law, but the question simply is, whether, by that continued course of dealing, the directors have not bound themselves to such an extent that they cannot be heard in a court of justice to

set up, with a view to defeat the rights of the parties with whom they have been dealing, that particular clause enjoining them to do an act which they themselves have neglected to do.'"

This principle does not impugn the doctrine that a corporation cannot vary from the object of its creation, and that persons
93 dealing with a company must take notice of whatever is contained in the law of their organization. This doctrine has been constantly affirmed in this court, and has been engrafted upon the common law of Ohio. Pearce *vs.* M. & J. R. R. Co., 21 How., 441; Strauss *vs.* Eagle Ins. Co., 5 Ohio, N. S. 59. But the principle includes those cases in which a corporation acts within the range of its general authority, but fails to comply with some formality or regulation which it should not have neglected, but which it has chosen to disregard."

In that case the stockholders' meeting had been held and proper resolution by unanimous vote—so far as the record showed—passed, and the bonds had been sold upon the representation of that vote, taken when the suing stockholder was present by proxy. Certainly the buyers of these bonds should not have been bound by facts which were not in the record and which contradicted the record upon which the bonds were sold. The fact that the suing stockholder was present by proxy and refused to put on the record his dissent which would have been decisive, would of itself — been sufficient to prevent his obtaining the relief he sought.

But construing the language of the court in its broadest acceptation and apply- it to the case at bar it is only to the effect, that had there been a petition by stockholders, presented to the board of directors of complainant's company directing this guaranty and that board had acted as directed,—reciting a majority had petitioned—the question of its compliance with the statute as to the reasons given or the number of stockholders petitioning would not be thereafter opened to inquiry as against *bona fide* purchasers.

The case of Toppan *vs.* The C. C. & C. R. R. Co., reported in 1st Flippin 75, is also much relied on by defendants' counsel. That case arose on the same guaranty of the bond of C. P. & I. R. R. Company mentioned in case of Zebriske *vs.* C. C. & C. R. R. Co., *et al., supra.* The action was at law by a bondholder of the guaranteed bonds for the interest thereon against the C. C. & C. R. R. Company.

The opinion of Judge Willson of the northern district of Ohio was upon a demurrer to the declaration. One of the objections urged was that the guaranty was not negotiable and the holder of the bond could not sue and recover thereon.

Another was that the defendant, having no power in its charter to make the guaranty, the legal authority and the facts and circumstances contemplated by the general act of 1852, by which such power could be exercised should be fully set out in declaration.

94 The learned court decided that the guaranty was negotiable and passed with the bond upon which it was endorsed. He also decided that the allegation in the declaration that "said guar-

anty was duly signed by the defendant by its then president, who was authorized to execute the same, and was afterwards to wit, etc., duly ratified and confirmed by the stockholders of said company" was sufficient. The latter ruling raised the question of the materiality under the law of 1852 of the time when two-thirds of the stockholders assented to the guaranty.

The statute of 1852 gave to railroad companies authority to aid, &c., other railroads when certain facts and circumstances existed and had the proviso—"that no such aid shall be furnished, nor any purchase, lease or arrangement perfected until a meeting of the stockholders of each of said companies shall have been called by the directors thereof at such time and place, and in such manner as they shall designate, and the holders of at least two-thirds of the stock of such companies represented at such meeting in person or by proxy, and voting thereat, shall have assented."

The court, in discussing the point, used language, which when disconnected from the case, is quite broad, but held the allegation of the declaration was sufficient and that the time of the assent of two-thirds of the stockholders was not material. It appeared in that case that the action of the directory in making the guaranty had been ratified by the stockholders. The extent of this decision is that the assent of two-thirds of the stockholders to the aid as given might be given after the aid as well as before.

That law provided for the arrangements and agreements to be made by the directors of the respective railroad companies and for them to call the stockholders together at such time, place and manner as they should determine, and then the action or proposed action of the directors should be assented to and was to be before the aid was furnished or the purchase, lease or arrangement was perfected. In that instance all arrangements and agreements and the initiative was to be taken by the directors and in fact, as is stated in the Zabriske case by Justice Campbell, the bonds with the guaranty upon them were not put upon the market until after the stockholders had assented to the guaranty. It is not intended to state the stockholders assented to the guaranty before the guaranty was endorsed upon the bonds but before they were put upon the market.

95 In the case at bar, the initiative was to be taken by the stockholders and they were to determine whether there should be a guaranty and direct the directors by a petition in writing giving the facts upon which they based their determination. This extraordinary corporate power was to be exercised by the stockholders themselves, and not by their agent, the board of directors, and in a way and manner that all who dealt with the corporation could know if they desired. These two cases, both in principal and facts, fall far short of the present case.

This view makes it unnecessary to consider and determine whether all of the defendants are *bona fide* holders of these bonds without notice of the facts which make the guaranty invalid.

The complainant is entitled to have its injunction sustained and

the guaranty on defendants' bond cancelled and a decree will go accordingly.

Complainant's proof is as follows:

The affidavit of John A. Hilton and exhibits therewith are as follows:

Circuit Court of the United States, District of Kentucky.

LOUISVILLE, NEW ALBANY & CHICAGO RAILWAY COMPANY *vs.* OHIO VALLEY IMPROVEMENT & CONTRACT COMPANY *et al.*	In Equity.

STATE, CITY, AND COUNTY OF NEW YORK:

John A. Hilton on oath says that he is now and has been since May, 1889, the assistant secretary and treasurer of the complainant in charge of its New York office, books and papers.

Affiant was present at the special meeting of the board of directors of complainant which met on October 8, 1889. The only directors present were Messrs. Dowd, Carson, Cook, Erhardt, Fetter, Hitt, Postlethwaite and Root.

At such meeting the record shows the following proceedings were had:

"The president laid before the board a proposal submitted by Mr. A. E. Richards, president of the Ohio Valley Improvement & Contract Company for a transfer to this company of three-fourths of the entire capital stock of the Richmond, Nicholasville, Irvine & Beattyville Railroad Company for a consideration of the
96 guaranty of the principal and interest of the bonds of said company by this company in accordance with the following proposed agreement:

"On motion of Mr. Cook seconded by Mr. Hitt, it was resolved that this company will guarantee the principal and interest of said bonds upon the terms proposed and that the president or vice-president and assistant secretary of this company be and they are hereby authorized to execute and deliver said agreement under the seal of this company."

Affiant says that the paper herewith filed marked "A" is a true copy of the original proposal made by A. E. Richards as president of the said improvement & contract company, and under the instruction of President Dowd copies thereof were sent to Vice-President Carson and others.

Affiant from time to time examined the original subscription paper which was kept by President Dowd in his office at the Bank of North America, and affiant copied the same and checked off the names of those subscribing for bonds and the several amounts taken and also at the request of said Dowd affiant made the calculations of the first partial payment on such subscriptions. Affiant attaches hereto a copy of such subscription paper together with the names

and amounts attached as B. Affiant also attended to properly sending out to the several subscribers a notice asking the first payment. A copy whereof is herewith filed as C.

On March 11, 1890, after three o'clock p. m., affiant was requested to go to the Bank of North America by President Dowd to seal and attest 585 guarantees on the back of that number of bonds of the Richmond, Nicholasville, Irvine & Beattyville Railroad Company, which was done that afternoon, in the presence of said Richards and the said bonds with such guarantees were left with the Bank of North America.

Affiant knows the signatures of William Dowd, John B. Carson and A. E. Richards and annexes hereto copies of divers letters and telegrams taken from the original letters and telegrams and letter-press books belonging to the company and on file in its office.

JOHN A. HILTON.

STATE, CITY, AND COUNTY OF NEW YORK, *ss:*

John A. Hilton, being duly sworn, says that the affidavit by him above subscribed is true.

Witness my hand and official seal this April 19, 1890.

[SEAL.] GEORGE H. TAYLOR,
Notary Public, N. Y. Co. (9).

97 Exhibit "A" referred to in the foregoing affidavit has heretofore been copied on page 29, being marked Exhibit "B" filed with the original bill of complaint, and is not here repeated.

Exhibit "B" referred to in Hilton's affidavit is as follows:

The Ohio Valley Improvement and Contract Company offers for sale eleven hundred and twenty-five (1,125) six per cent. first-mortgage thirty-year bonds of $1,000 each, dated July 1st, 1889, of the Richmond, Nicholasville, Irvine & Beattyville Railroad Company, principal and interest to be guaranteed by the Louisville, New Albany & Chicago Railway Company, at 90 cents on the dollar and accrued interest. The delivery to be made as the bonds are endorsed, pursuant to the contract with the Louisville, New Albany & Chicago Railway Company, Ohio Valley Improvement & Contract Company, by A. E. Richards, president.

The undersigned, severally and each for himself agree to take and pay for at the foregoing price the number of bonds set opposite their respective names:

Names of subscribers.	No. of bonds.
Robert H. Hitt	100
H. H. Cook	25
James Roosevelt	20
Elihu Root	100
D. H. Houghtaling	25
J. M. Fetter	100
Geo. M. Pullman	100
John B. Carson	100

J. S. Bryce	10
Carroll S. Bryce	6
Wm. Dowd	70
Walter Howe	10
C. H. White & Co	79
D. G. Rollins	10
S. H. Wales	20
Wales & Co	320
Total	1,125 bonds.

Exhibit C, with Hilton's affidavit, is as follows:

98 Three hundred thousand dollars of the R. N. I. & B. R. R. Co.'s bonds guaranteed by the L. N. A. & C. Railway Co., are ready at the Bank of North America, 25 Nassau St., New York city, for delivery to the syndicate of which you are a member. This is a fraction over one-fourth of the total. Your subscription was for 100,000 bonds; and bonds amounting as near as may be to your proportionate share, say 25,000 bonds of $1,000.00 each will be delivered to you upon the payment of the purchase price with accrued interest on or before the 15th of January next. If payment is made before January 1, 1890, the accrued interest will be from July 1, 1889. If payment is made on or after January 1, 1890, the bonds will be delivered without the January coupons and accrued interest will be from January 1, 1890. Checks should be made payable to the order of the Bank of North America.

Yours respectfully, —— ——, *Cashier.*

NEW YORK, *June* 13, 1889.

James Roosevelt, care of train-dispatcher, Del. & Hudson R. road, Albany, N. Y. (who will please forward):

Can you meet Mr. Carson and Judge Richards here tomorrow in relation to railroad matters in Kentucky. Say when you can come. Important.

(Signed) WM. DOWD, *Pres't.*

Telegram.

W 628 N Y ED MY 52 DH
Received at Chicago, Ill., June 26, 1889.
Dated New York, 26.

To John B. Carson, vice-pres't L. N. A. and C. R. R., Chicago:

I shall be out of town from June twenty-eighth until July ninth. Telegrams will reach me if sent to New York office. Mr. Hitt is much pleased with Judge Richards' scheme, and will take an interest. Mr. Roosevelt is to get a man to go to Kentucky and make examination of enterprise.

WM. DOWD, *Pres't.*

2.44 p. m.

(By stipulation pages 345 to 371 are omitted.)

99 The deposition of John A. Hilton is as follows:

In the Circuit Court of the United States for the District of Kentucky.

LOUISVILLE, NEW ALBANY AND CHICAGO RAILWAY CO.
vs.
OHIO VALLEY IMPROVEMENT AND CONTRACT CO. *et al.*

JOHN A. HILTON, a witness called on behalf of the plaintiff herein, and residing at Jersey City heights, New Jersey, more than 100 miles from the place where this cause is to be tried, being duly cautioned and sworn to tell the truth, the whole truth and nothing but the truth, and being carefully examined deposes and says as follows:

Q. What is your name, age, residence and occupation?

A. My name is John A. Hilton. I reside on Jersey heights, New Jersey. I am fifty-seven years of age. I am assistant treasurer and assistant secretary of the plaintiffs herein.

Q. How long have you occupied those positions of assistant treasurer and assistant secretary?

A. Since May 1889.

Q. You have heretofore given an affidavit in this case which was sworn to by you on April 19, 1890, with which you filed: First. A copy of a proposition signed by the Ohio Valley Improvement and Contract Company by A. E. Richards president. Second. A copy of a list of subscribers to the bonds of the Richmond, Nicholasville, Irvine and Beattyville Railroad Co. Then copies of a series of letters and telegrams, all of which copies are attached to your affidavit now on file in this case in this court. Will you please state whether these copies are true and correct copies of the originals from which they purport to be taken?

A. They are.

Q. Will you please by reference make the affidavit aforesaid with the copies aforesaid a part of your deposition?

A. I do by reference thereto.

Q. Have you recently read that affidavit?

A. I have.

Q. Are you ready to reaffirm all the statements therein contained?

A. I am.

100 Q. Was the endorsement of the guaranty placed upon the bonds of the Richmond, Nicholasville, Irvine and Beattyville Railroad Company by the complainant's officers ever petitioned for or requested by the stockholders of the complainant?

A. No, it was done on the sole authority of the directors.

Q. Do you remember the date of the first stockholders' meeting after the endorsement?

A. March 12, 1890.

Q. Can you state the dates upon which eleven hundred and eighty-five bonds of the Richmond, Nicholasville, Irvine and

Beattyville Railroad Company were endorsed by the complainant under the assumed authority of its board of directors?

A. Six hundred of these bonds, numbers from one to six hundred inclusive, were guaranteed during the month of December, 1889, and five hundred and eighty-five of them, numbered from six hundred and one to eleven hundred and eighty-five inclusive on March 11th, 1890, the day before the annual meeting of the stockholders of this company.

Q. You may now state whether the annual meeting of stockholders convened March 11, 1890, adjourned to any particular time, if so, what?

A. The meeting of stockholders adjourned to March 22d, 1890.

Q. Before the adjournment was a new board of directors elected?

A. Yes.

Q. Can you state whether or not the president for the year before made a report to the stockholders showing the existing condition of the road and with some detail the obligations and alleged contracts of the road?

A. The minute book shows that William Dowd, who was the president at that time, presented a resume of the operations of the road for the last year, and that thereupon it was resolved that when the meeting adjourned it should be to the 22d of the month to take into consideration matters indicated in the president's report as to the leased lines in Kentucky; such adjournment being made to enable the stockholders to obtain further information as to such leases before acting upon any ratification or rejection thereof.

Q. Do you know whether the newly made directors made a detailed report with recommendation to the adjourned stockholders' meeting held on the 22d March, 1890?

A. Yes, they did.

101 Q. Will you please make an extract from the minutes of the stockholders' meeting covering their action in reference to the guaranty placed upon the bonds of the Richmond, Nicholasville, Irvine and Beattyville Railroad Company, by the officers of the complainant and file said extract as a part of your deposition?

A. I have had such an extract made which is an accurate transcript from the minute book, which is as follows:

Extract from the minutes of the stockholders' meeting of the Louisville, New Albany and Chicago Railway Company, held 22nd of March, 1890, being an adjourned meeting from the 12th of March, 1890.

On consideration thereof the following resolutions on motion of Mr. Bumstead were adopted 32,741 votes in favor of same and 12,313 against.

Whereas, the stockholders of the Louisville, New Albany and Chicago Railway Company have this day heard and considered the report and recommendations of the board of directors submitted by their order of March 21st, 1890,

Be it therefore—

Resolved, That the stockholders of this company do adopt and ratify such report and suggestions and they do hereby reject and refuse to adopt or confirm the several agreements mentioned in such report as having been made without legal authority and the approval of the stockholders. The agreements so made without authority, and hereby rejected are as follows:

A contract with the Kentucky and Indiana Bridge Company dated July 19th, 1889.

A contract with the Louisville Southern Railroad Company dated October 19th, 1889, concerning the lease of its Lexington extension.

A contract with the Ohio Valley Improvement and Contract Company, dated October 9th, 1889.

The pretended guaranty of this company placed on $1,185,000 of the bonds of the Richmond, Nicholasville, Irvine and Beattyville Railroad Co.

Resolved also

The board of directors is hereby vested with full power to take all such proceedings, legal or otherwise, as they may be by counsel advised, are necessary or proper to cancel all such contract and guaranty and relieve this company from all obligations or liability by reason thereof.

The same is filed with my deposition as "Exhibit J. A. H. No. 1."

JOHN A. HILTON.

102 Subscribed and sworn to before me this 28th day of March, 1894.

[SEAL.] JOHN P. BUTLER,

U. S. Commissioner for the Southern District of N. Y.

The deposition of H. V. Loving, &c., taken on the 20th day of Feb., 1893, on behalf of the complainant, is as follows:

H. V. LOVING being duly sworn and examined by Mr. Crawford, as attorney for the complainant, deposed as follows:

Q. Please state your name, residence and occupation.

A. H. V. Loving; Louisville, Ky.; president of the Louisville Trust Co.

Q. Is that the same corporation that is a defendant in a suit in the circuit court of the United States for the district of Kentucky, brought by the Louisville, New Albany and Chicago Railway Co. against the Ohio Valley Improvement and Contract Co.?

A. It is.

Q. How long have you been president of the Louisville Trust Co.?

A. Since its organization in 1884.

Q. Is the Louisville Trust Co. the owner of any bonds of the Richmond, Nicholasville, Irvine and Beattyville Railroad Co.?

A. It holds a large number of those bonds as collateral on loans made to the company.

Q. Do you know the number of bonds so held by the Louisville Trust Co., as collateral, and the serial numbers of such bonds, the same being known as endorsed bonds or guaranteed bonds of the complainant in this litigation? If so I will ask you to kindly state how many of those guaranteed bonds the Louisville Trust Co. holds as collateral, and the serial numbers thereof.

A. They hold as collateral 336 bonds endorsed or guaranteed by the Louisville, New Albany and Chicago Railway Co., thirteen of them are numbered from No. 768 to No. 780 inclusive; forty-one are numbered from No. 798 to No. 838 inclusive; one hundred and fifteen are numbered from No. 891 to No. 1005 inclusive; thirteen are numbered from No. 1008 to No. 1020 inclusive; one hundred and fifty-four are numbered from No. 1022 to No. 1175 inclusive; making a total of 336 bonds of $1,000 each.

103 Q. These 336 bonds bear upon them do they, the guarantee of the Louisville, New Albany & Chicago Railway Co.?

A. They do.

Q. Did your trust Co. receive all these bonds as collateral at one time, and on one transaction, or at different times?

A. We received them at different times and on different transactions as collateral security on different amounts loaned.

Q. Please state when was the earliest of these transactions, and what bonds it covered?

A. The first endorsed bonds that we received I believe was on January 16th, 1890. We then received one hundred and twenty-five of those endorsed bonds as collateral on a loan to the Ohio Valley Improvement and Contract Co., on a note of the Ohio Valley Improvement and Contract Co., said bonds being numbered from 1151 to 1175 inclusive. That is the only date that I can give you unless I go downstairs.

Q. Were the other transactions where you received these endorsed bonds subsequent in point of time to the one you have indicated?

A. I believe that is the first batch of endorsed bonds we received.

Q. Is it not a fact that when you received those bonds as collateral on the note of the Ohio Valley Improvement and Contract Co., that those bonds were not then guaranteed by the New Albany Railroad Co., but that they were sent to New York for the purpose of being guaranteed after they had been hypothecated to your trust Co.?

A. My recollection is that they were guaranteed at that time. It is possible that you may be correct about it, though I am not of that impression. I think they were endorsed at that time.

Q. The Louisville Trust Co. is the assignee of Cornwall & Bros., is it not?

A. It is.

Q. Have you any of the bonds of the Beattyville railroad endorsed by the Monon Co., as assignee of Cornwall & Bros. or are those unendorsed bonds?

A. We hold a lot of those bonds, but I am not able to say whether they are endorsed or not.

Q. I assume that you will make the same answer with regard to Wm. Cornwall, Jr.?
A. Yes, sir.
Q. Your company holds besides these 336 bonds, also a lot of 235 unindorsed bonds do they not?
A. Yes, sir, we do.

104 ATTILLA COX, being duly sworn and examined by Mr. Crawford for the complainant, testified as follows:

Q. Please state your name, residence and occupation?
A. Attilla Cox; Louisville, Ky.; president of the Columbia Finance & Trust Co.
Q. Does the Columbia Finance & Trust Co. hold as owner collateral or otherwise, any of the bonds of the Richmond, Nicholasville, Irvine & Beattyville R. R. Co.; endorsed by the Louisville, New Albany & Chicago R. R. Co.?
A. No, we have no endorsed bonds in any capacity.
Q. You hold 75 and 68 unindorsed bonds do you?
A. I could not say the amount of bonds. I have had no information as to what this interrogation was to be, and did not get any information.
Q. Your company does not hold any unindorsed bonds as owner, pledgee or otherwise?
A. No, sir. We did hold 75 bonds at one time as collateral.
Q. Were those guaranteed bonds?
A. No, sir.
Q. Your company never held any endorsed or guaranteed bonds?
A. No, sir.

A. E. RICHARDS being duly sworn and examined by Mr. Crawford for the complainant deposed as follows:

Q. Please state your name, residence and occupation?
A. My name is A. E. Richards; residence Louisville, Ky.; occupation lawyer.
Q. Were you president of the Ohio Valley Improvement and Contract Co., which is a defendant in the suit in which these depositions are taken?
A. I was elected president of that company in October, 1888, and am still president.
Q. Are you familiar with the issue of the first-mortgage bonds of the Richmond, Nicholasville, Irvine and Beattyville R. R. Co. and the endorsement of 1,185 of such bonds by the Louisville, New Albany & Chicago Railway Co., the complainant herein.
A. I was not an officer of the railroad Co. when the bonds were issued. They came into the hands of the Ohio Valley Contract Co., after their issue.
Q. Were you not personally present in New York when the guarantee was endorsed upon the back of those 1,185 bonds issued by the railroad Co.?

105 A. I don't remember whether I was present when the first 600 were endorsed, but I was when the last 585 were endorsed.

Q. The first 600 endorsed were bonds numbered from 1 to 600, both inclusive, were they?

A. Yes, sir.

Q. You don't recollect whether you were there or not?

A. I do not know now. If it is a matter of importance I could possibly run it back and see.

Q. Do you remember about when the guarantee was actually endorsed on those bonds numbered from 1 to 600 inclusive?

A. I have no personal recollection beyond the answer filed by the Ohio Valley Improvement and Contract Co., in this case, in which I see it is alleged to have been in December of 1889.

Q. Do you remember when the remaining 585 bonds were actually endorsed with the guarantee of the complainant company?

A. I know that they were endorsed in March, 1890, and the answer of the company fixes it as the 11th of March, which I assume is correct.

Q. You were in New York, were you not, when they were endorsed, and witnessed the endorsement?

A. I was in New York when they were endorsed, and was present a part of the time while they were being endorsed.

Q. The 585 bonds endorsed on March 11th, 1890, were numbered were they not from 601 to 1185 both inclusive?

A. Yes, sir.

Q. Do you now, or did you ever own or hold in trust, or as collateral or otherwise, any of the bonds of the Beattyville Co., bearing thereon the endorsement or guarantee of the Louisville, New Albany & Chicago Railway Co.?

A. Yes, sir; I bought four of them either in January or February, 1890, and borrowed the money to pay for them from the Kentucky National bank, and pledged those bonds for collateral security. I paid off all the loan except $500, and the bonds are still pledged for that.

Q. Do you recollect the numbers of those four bonds?

A. No, sir, I do not. They were of the first 600.

Q. Please state the serial numbers of the four bonds which you so purchased?

A. I have enquired at the bank and they are numbered as follows, 297, 298, 299 and 300.

106 Q. I observe by exhibit on file with the foreclosure suit against the Beattyville road, in which you are counsel for The Central Trust Co., complainant, that you signed a declaration declaring a number of the bonds to be due, and signing for fifteen and one-third bonds. Did that signing embrace the four bonds about which you have just testified?

A. Yes, sir.

Q. Were the other eleven and one-third bonds unguaranteed and unindorsed?

A. Yes, sir.

Q. You hold and own the same four bonds that you purchased some time after January, 1890, out of the first 600 endorsed?

A. I own them subject to the pledge of the Kentucky National bank.

Q. You never held any more, and still hold these?

A. That is all.

Q. From whom did you purchase those four bonds?

A. From the Ohio Valley Improvement & Contract Company.

Q. Of which you are president?

A. Yes, sir.

Q. How many bonds of the Beattyville Company does the Ohio Valley Improvement & Contract Co. now hold?

A. Well, early in December, 1892, the Ohio Valley Improvement & Contract Co. made a general assignment of all its assets for the benefit of its creditors, naming the Louisville Trust Co. as assignee. I could approximate the number of bonds that were turned over as unpledged, but it would only be speaking from recollection. I did not keep the books, nor superintend the keeping of the books. We had a secretary and treasurer who in connection with the book-keeper took charge of that part of our work. I very seldom ever looked at the books.

Q. At the time that the Ohio Valley Improvement & Contract Co. made an assignment to the trust Co., did it own or turn over under the assignment any of the Beattyville R. R. Co.'s bonds endorsed by the New Albany R. R.?

A. It did not deliver to the Louisville Trust Co. under that assignment any of the bonds that were so endorsed, but of course the assignment covered the contract Co.'s right, title and interest in all the endorsed bonds that had theretofore been pledged to different parties for loans and debts.

Q. But physically it turned over none?

A. It turned over none.

107 Q. Before the assignment of the Ohio Valley Improvement & Contract Co. the Ohio Valley Improvement & Contract Co. had surrendered in this court in this case had it not, 168 bonds, or about 168 bonds, for the cancellation of the guarantee of the complainant, had it not?

A. My understanding was, through Col. Bullitt, one of the attorneys for the contract Co., that all of the bonds of the Ohio Valley Improvement & Contract Co., held by them unclaimed, that were endorsed by the complainant, were surrendered in court and the endorsement cancelled.

Q. And from that time forward it only held unindorsed bonds in its own custody, and then its interest in the hypothecated endorsed bonds?

A. That is all. It was my instruction to the secretary and treasurer and to the book-keeper that the injunction of the court in this case was to be strictly obeyed; that they were not to handle or dispose of any of the bonds that were endorsed, after that injunction was issued. So far as I know those instructions were rigidly carried out.

Q. Do you recollect the number of bonds which were signed for by the Ohio Valley Improvement & Contract Co., in the declaration made on the Central Trust Co. declaring the number of the Beattyville bonds to be due.

A. No, sir; I don't remember the exact number. To the best of my recollection it was somewhere between eleven and twelve hundred.

Q. Do you remember how many of these bonds so signed for were actually held unclaimed in the custody of the improvement Co. at that time:

A. No, sir; not the exact number, but I can state that it was less than 100.

Q. Nearly the entire amount then, signed for in the declaration, were bonds that were hypothecated, and in the hands of pledgees, were they?

A. Yes, sir; but to a large extent the parties who held the bonds as pledgees also signed the declaration.

Q. Please indicate who the parties were that were pledgees of these bonds as near as you remember them.

A. The Louisville Trust Co., Bennett H. Young, Louisville Banking Co., and the Columbia Finance and Trust Co., so far as I remember.

Q. You made sale did you not of quite an amount of the guaranteed bonds of the first installment, being part of the serial numbers from 1 to 600 inclusive?

A. The company made a sale. I did not personally conduct the negotiations for the company with all the parties.

108 Q. Was there not a kind of subscription paper gotten up and signed by parties agreeing to take so many bonds?

A. That was true of the bonds that were sold to parties away from here.

Q. New York parties and others, you mean?

A. Non-resident parties.

Q. How was it as to the Kentucky parties?

A. I don't remember that that was observed as to the Kentucky parties. My impression is that the bonds that were sold from the home office were dealt out in small amounts to a large number of parties, and very often delivered as they were called for. That is, without any prior negotiations.

Q. Your memory is then, that there was no subscription paper such as there was prepared and signed by New York and Chicago and other parties?

A. No, I did not mean to state that. I think that in all probability there were some papers signed by parties here.

Q. Where are those papers now?

A. If I am correct in that, they will be found with the papers of the company as filed away by the secretary and treasurer and bookkeeper.

Q. And where are those papers now? With the Louisville Trust Co., as assignee?

A. No.

Q. In Cornwall's possession?

A. Those kind of papers are in the vault in my office, and have always been subject to the examination of the trust Co., or the book-keeper, or anybody that is interested in them.

Q. As a matter of fact, was not it the understanding when this New York subscription was gotten up, that there should be a similar subscription gotten up here by the interests at Louisville here, that should undertake to dispose $200,000 of the bonds or thereabouts?

A. It was understood that one-half of the issue of $600,000 should be sold among our people here.

Q. You remained in New York and helped to get up that $300,000 subscription there?

A. Remained where?

Q. You remained in New York when that contract was made between the New Albany Company and the Ohio Valley Improvement and Contract Co.?

A. No, sir; I did not remain there. I came back to Louisville, and when the paper was sent to me with Mr. Hitt's signature to it as a subscriber, then I went to Chicago and got one or two signatures there.

109 Q. You got Mr. Pullman's?

A. Mr. Pullman's and Mr. Carson's and then I went to New York and remained there until all or a large portion of the remaining signatures were fixed.

Q. Then after that was done did you return to Louisville and undertake to get up a syndicate that would take the other $300,000 of the guaranteed batch of bonds?

A. I don't remember the dates at which either of these $300,000 of bonds were actually sold, but my impression is that the eastern syndicate was made up before we sold all the remaining $300,000 of bonds here, but I am not sure of this.

Q. There are facilities, are there not, among your books and papers to ascertain whether there was or not one or more subscription papers gotten up here and signed at Louisville, and in the West?

A. Oh, I have no doubt but what our secretary and our book-keeper can answer definitely as to all these questions.

Q. Do you remember who here in Louisville and in the State, subscribed for and took some of these guaranteed bonds; if so give their names and residences so far as you remember?

A. The Ohio Valley Improvement and Contract Co. also sold a large number of bonds among other people here that were not endorsed, and it would be rather uncertain for me to attempt from memory to separate those who took indorsed bonds from those who took unindorsed bonds. I know some of the people who took endorsed bonds at that time, but I could not give the amounts that each one had.

Q. That will have to be gotten from the books?

A. That can be gotten from the books. I have no doubt the

books show correctly the name of every man, and the number of bonds that were sold, whether guaranteed or unguaranteed.

Q. State the names of the parties here according to your recollection who bought any of the guaranteed bonds.

A. Dennis Long took some. Theodore Harris, J. W. Stein, Vernon D. Price, William Cornwall, Junior; Cornwall and Brother. My four were out of that number. Mr. Deppen who is now dead. Mr. R. A. Newhouse who is now dead. W. H. Dillingham, Dr. Barnes, the dentist. I think Shuttleworth & Gorman's bonds were endorsed. The rest would be mere surmise; I cannot separate them.

110 Q. Do you remember about the pledge of the 125 bonds to the Louisville Trust Co., and then getting them out of pledge and sending them on to New York for the purpose of having the guarantee put upon those particular bonds?

A. I remember a circumstance of that kind, the circumstance about the $125,000 of bonds that were first hypothecated with the Louisville Trust Co., and afterwards withdrawn, and the endorsement placed upon them and returned to the Louisville Trust Co. The facts are correctly set out in the answer of the Ohio Valley Improvement and Contract Co., filed in this case. My recollection is that these bonds were pledged for borrowed money prior to the endorsement, with the understanding that so soon as we were entitled to have more bonds endorsed under our contract with the Louisville, New Albany & Chicago Railway Co., that these bonds were to be included among the bonds to be endorsed, and were to be returned to the trust Co. They were never taken back from the pledge by the Ohio Valley Contract Co., but were simply forwarded to obtain the endorsement upon them according to the agreement made at the time they were pledged.

Q. Was this agreement that you speak of with regard to these unindorsed bonds being made endorsed bonds after the pledge was made, in writing or an oral understanding?

A. It was simply an oral understanding.

Q. Between whom?

A. Between the officers of the Louisville Trust Co., and the officers of the Ohio Valley Improvement and Contract Co.

Q. Which officers of both companies?

A. Mr. Loving, and I think Mr. Cochran of the trust Co., had knowledge of it. I had knowledge of it on the part of the Ohio Valley Improvement and Contract Co., and I think Mr. Cornwall, our secretary and treasurer also had.

Q. Was there any action on the part of the directors of the Ohio Valley Improvement and Contract Company, of any such kind as that?

A. No, sir; I don't think there was.

Q. Did you not personally bring with you from New York the $585,000 of bonds which were endorsed on the 11th of March, 1890?

A. My recollection is that I did not.

Q. Did you not express them, or personally see that they were expressed?

A. I do not remember whether I did or not, but I either
111 personally attended to it or directed some one else to do so. My recollection is that they were sent by express, and if it was not attended to before I left New York I left definite directions for somebody to do it. I cannot recollect exactly how it was done.

Q. Of that amount $292,000 were either sent directly to the Louisville Trust Co., or were placed there by your directions, were they not?

A. I cannot remember the numbers of those bonds. I met Mr. Helm last week, and requested him, if he expected to examine me about these kind of things, that he would give me a memorandum so that I could look them up and be able to answer definitely. He did not give me any memorandum, and consequently I would be answering at random as to the exact amounts.

Q. You however do remember do you not that there was fully up to half, or about half of the last batch of 585 bonds endorsed were placed here in the Louisville Trust Company, to be delivered over to the New York syndicate subscribers on payment?

A. I expect that is correct. By reference to our books I could give the exact amount.

Q. Refreshing yourself by examining a copy of the answer of the improvement company, filed in this case, you may state whether or not $282,000 of the guaranteed bonds of the second batch were not deposited with the Louisville Trust Company, in trust for the New York syndicate of purchasers, to be delivered to them on payment?

A. They were so deposited for the syndicate of which the New York purchasers were a part.

Q. By whose orders were they deposited there?

A. By mine, as president of the Ohio Valley Improvement & Contract Company.

Q. By refreshing yourself again by that answer, please state how many of those 292 guaranteed bonds so lodged with the Louisville Trust Company, had been delivered to purchasers before the institution of this suit?

A. The allegation of the company's answer is that $78,000 had been so delivered, and I have no doubt that is correct.

Q. That left $214,000 of bonds then that were with the Louisville Trust Company, in trust for the syndicate of purchasers did it?

A. Yes, sir.

Q. Now what became of those bonds?

A. I am not able to answer without examining the books. It could only be answered by some one who was familiar with the books.

112 Q. Outside then of this $291,000 so deposited in trust for the purchasing syndicate and others that left $293,000 did it?

A. Yes, sir.

Q. And of that, $125,000 were the hypothecated bonds of the Louisville Trust Company?

A. Yes, sir.

Q. Deducting those leaves $168.000, does it not?

A. Yes, sir.

Q. That seems to be the exact amount of bonds that were surrendered for cancellation. Do you know what became of those $214,000 of bonds that were lodged with the Louisville Trust Company, or any of them?

A. No, sir; I do not, but our secretary and book-keeper can undoubtedly give the information.

Q. Did you ever give any direction with regard to their custody or disposition other than to deposit them with the Louisville Trust Company in trust for delivery to the purchasing syndicate?

A. Well, I cannot answer that without an examination of the books and papers. I expect though that it will be found that a considerable number of them were delivered to the purchasers under the agreement by which they were deposited with the trust company.

Q. You are foreclosing, are you not, the mortgage to the Central Trust Company, securing these first-mortgage bonds both guaranteed and unguaranteed?

A. A suit for that purpose is pending in the United States circuit court for this district.

Q. You are counselor for the complainant?

A. Yes, sir.

Q. Do you represent all the bondholders as such, or any of them, or do you represent simply the trustee?

A. I represent simply the trustee.

Q. Have the bonds been proven up in the case?

A. No, sir.

Q. The Louisville Trust Company has itself intervened?

A. Yes, sir.

Q. Has anybody except it as a bondholder intervened?

A. No, sir.

Q. Do you know, or have you a list of all the bondholders?

A. No, sir.

Q. Have you a partial list?

A. Not as counsel in that suit. We have on the books of the Ohio Valley Improvement & Contract Company, a list of all the parties to whom the company sold bonds, but whether that is a correct list of the present holders or not I could not say.

113 Also the deposition of BENNETT H. YOUNG, who being duly sworn and examined by Mr. Crawford for the complainant, deposed as follows:

Q. State your name, residence and occupation?

A. Bennett H. Young, I reside in Louisville, Ky.

Q. Are you now, or have you ever been the owner of any bonds of the Richmond, Nicholasville, Irvine & Beattyville Railroad Company, endorsed by the Louisville, New Albany & Chicago Railway Company, if so how many?

A. I never was the owner of but two of those bonds, one of which I still have in my possession.

Q. Will you kindly furnish the serial number of that bond in reference to this interrogatory?

A. I will send to the stenographer the number of this bond.

Q. I see by the original declaration signed by the stockholders on the Central Trust Co., trustee, that you signed as owner for ten and one-third bonds, and as collateral security for fifty-five bonds. Were all of those outside of the one or two guarantees or unguaranteed bonds?

A. None of those bonds were guaranteed bonds. All the bonds for which I signed were bonds that did not have the guarantee of the Louisville, New Albany and Chicago Railway Co.

Q. To whom did you sell the one guaranteed bond which you do not now hold?

A. That one bond I sold through a broker. It was sold through the trust company. I will find out and answer.

Q. Did you ever sign a subscription paper here to take these guaranteed bonds or any part of them?

A. No, sir.

Q. Do you know of any such paper?

A. No, sir; I heard there were some bonds sold, but I do not know personally.

Q. Were you a stockholder or interested in the Ohio Valley Contract and Improvement Co.?

A. I had some stock in the company.

LOUIS V. CASSILLY being duly sworn and examined by Mr. Crawford for the complainant, deposed as follows:

Q. Please state your name and residence?

A. Louis V. Cassilly, Louisville, Ky.

Q. Were you ever officially connected with the Ohio Valley
114 Improvement and Contract Co.? If so, in what capacity, and from what date to what date were you so connected?

A. I was the book-keeper of the Ohio Valley Improvement and Contract Company from about the last part of 1888, November or December. That was about the time that I went with them, and I stayed with them until the time of assignment to the Louisville Trust Co.

Q. What date was that?

A. I don't remember. That was the last part of 1892.

Q. You were therefore the book-keeper of the improvement Co. from its origin to the time of its assignment?

A. Yes, sir; from the time that it commenced doing business.

Q. How many bonds of the Richmond, Nicholasville, Irvine & Beattyville Railroad Company did the improvement company receive on its contract for constructing the railroad?

A. They received $2,375,000 of railroad bonds at par.

Q. Of that number how many ever bore the endorsement or guarantee of the Louisville, New Albany & Chicago Railway Co.?

A. Eleven hundred and eighty-five.

Q. Was the latter amount of bonds you have just mentioned all

guaranteed at one time, or if not at one time, at how many times? And give the dates as near as you remember.

A. I think the first number that were endorsed was six hundred. That was the last part of 1889. The next number was 585, and they were endorsed one or two months later as near as I can remember now.

Q. Of that first number of bonds of six hundred, what disposition was made of them?

A. There was three hundred sold to an Eastern syndicate and three hundred sold to Louisville parties.

Q. How were the sales to the Louisville parties effected and by whom?

A. Well, I don't remember just exactly how it was done. There were subscription papers circulated here by a number of parties who were interested in the company, and people took them, and they were turned over to them. I don't remember any more than that.

Q. The disposition of the bonds here at Louisville then was by way of signing subscription papers by the purchasers, according to your recollection?

A. According to my recollection.

Q. You saw those subscription papers when you were in the office, didn't you?

A. I presume I did at the time.

115 Q. They ought to be among the files and papers of the company?

A. I won't say there were any subscription papers signed. The parties agreed to take them, and I cannot remember whether the parties who took them just had them turned over to them, or whether they signed the paper. I cannot remember. If there were subscription papers they never were destroyed, and they will be found among the records somewhere.

Q. And then the subscriptions were entered on the books?

A. No, sir; the subscriptions were not entered on the books.

Q. I do not mean the books of subscription, but the name of the subscriber, and the amount and price, those were all entered?

A. When they bought the bonds we of course credited up the amount of their payment.

Q. Up until that time did the improvement Co. owe any indebtedness here to the Louisville Trust Co.?

A. I cannot remember in regard to that.

Q. None of the first numbers of bonds guaranteed, from No. 1 to No. 600, were used as collateral, were they? They were all sold outright?

A. Yes, sir.

Q. Three hundred East and three hundred West?

A. Yes, sir.

Q. Then of the second batch of 585 bonds, what was done with those bonds?

A. My recollection of it is that there was fifty-two of those bonds

sold to Eastern parties, that is, what we always called the Eastern syndicate. I don't remember what was done with the others.

Q. Where are the books and papers of the improvement Co.?

A. They are in the office of Richards, Weissinger & Baskin.

Q. In this building?

A. Yes, sir.

Q. If you have an opportunity to investigate those books and papers you can be more precise in giving the dates of these different bond sales, the amounts realized, and the persons to whom sold, can you not?

A. Yes, sir; I can make up a statement of those sales.

The further taking of depositions in this behalf was thereupon by me adjourned until tomorrow morning, February 21st, 1893, at ten o'clock a. m.

116 FEBRUARY 21ST, 1893.

THEODORE HARRIS, being duly sworn and examined by Mr. Crawford, for the complainant, deposed as follows:

Q. Please state your name and residence.

A. Theodore Harris, Louisville, Ky.

Q. Are you officially connected with the Louisville Banking Co., and if so in what capacity, and for what length of time have you been so connected.

A. I am president of the Louisville Banking Co., and have been for nearly twenty-six years.

Q. Do you individually own any of the bonds of the Richmond, Nicholasville, Irvine & Beattyville Railroad Co., bearing thereon what purports to be a guarantee of the Louisville, New Albany & Chicago Railway Co.?

A. I do.

Q. How many of such bonds do you now own?

A. $20,000. Twenty bonds, of $1,000 each.

Q. Is that all you ever owned with such guarantee?

A. All that I ever owned.

Q. I will ask you to examine your papers, and kindly furnish the examiner with the serial numbers of those twenty guaranteed bonds.

A. Said bonds are numbered as follows: Nos. 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281 and 282.

Q. When did you become the owner of those bonds, and how?

A. I don't remember the time. It was long ago. I bought them, I suppose, from the Ohio Valley Improvement & Contract Co.

Q. Of which Judge Richards was president?

A. Yes, sir; I suppose that I bought them from him. I know that I bought them from Judge Richards, representing, as I supposed, that company.

Q. Did those bonds bear the guarantee of the New Albany road when you bought them?

A. That is my recollection. I have not seen them since. Whatever endorsement they have now they had then.

Q. Did you sign a subscription paper agreeing to take those bonds in advance of the guarantee?

A. No, sir, I did not. I did not buy them until after the guarantee was on them. I did not subscribe for them before that time, and when I bought them I paid the money for them.

Q. You bought them from the Ohio Valley Improvement & Contract Co.?

117 A. I am not sure of that. I think likely.

Q. Were you a member of the Ohio Valley Improvement & Contract Co.?

A. Yes, sir.

Q. You held stock in it?

A. I did, unfortunately.

Q. You were a director in it, were you not?

A. Yes, sir.

Q. You knew of the contract between the Ohio Valley Improvement and Contract Co. and the New Albany road, which is made an exhibit in this case, wherein the New Albany road bound itself to attach its guarantee on those bonds, didn't you?

A. In a general way, I did. I knew of it as a matter of hearsay. I don't think I ever saw the contract.

Q. You knew of the New Albany road agreeing to attach its guarantee on those bonds in consideration of a certain amount of the stock of the Nicholasville, Irvine and Beattyville Railroad Co., which stock was to belong under its construction contract to the Ohio Valley Improvement and Contract Co.?

A. I think that is the contract.

Q. That is the general nature of the contract?

A. I think it is.

Q. That as you remember it was in a written contract adopted by the board of directors of the improvement Co., of which you were a member?

A. I don't remember of being at any meeting of the board when any such contract was presented to the board, and I don't remember ever having seen the contract.

Q. You knew, in a general way, that that was the arrrangement?

A. I knew in a general way, as a matter of hearsay told me by Judge Richards, that there was some contract with the Monon Railroad Company whereby, in consideration of stock given to the Monon railroad, they would guarantee the principal and interest of those bonds.

Q. How many bonds of the Beattyville Railroad Company, using that phrase for short, purporting to be endorsed by the New Albany road, are now owned or held by the Louisville Banking Co., of which you were and are president?

A. Speaking from memory, I think five or six. There may be as many as ten.

Q. Did the Louisville Banking Co. ever at any time have any larger amount of guaranteed bonds than the number it now holds?

A. I could not say positively about that.

118 Q. What is your best impression on that subject?

A. I rather think not.

Q. Does the Louisville Banking Co. now hold these bonds as owner or as collateral security?

A. It held them, first, as collateral security. It holds them now as owner.

Q. In what manner did it become owner?

A. By sale.

Q. Under the power of pledge?

A. Yes, sir.

Q. Given in the note which represented the original loan?

A. Yes, sir.

Q. Do you remember when the bank undertook to sell the collateral out and become the owner?

A. Speaking from memory I should think probably six months ago.

Q. Since this suit has been brought?

A. I don't know anything about the suit—not since service was had upon the Louisville Banking Co.

Q. Do you recollect about what time the original loan was made to the improvement & contract Co., and these guaranteed bonds taken in pledge?

A. There were two loans, made probably three years ago, perhaps not so long—made more than a year and a half ago, or as much as a year and a half ago.

Q. Could you by examining the bank books give the dates of those loans?

A. Yes, sir.

Q. I will ask you to furnish a statement to be annexed to your deposition that will give the date and amount of each of those loans, when due, and also the serial numbers of the Beattyville bonds guaranteed by the New Albany Company, that were held as collateral to each of such loans?

A. I will furnish such a statement.

The deposition of LOUIS V CASSILLY was thereupon continued by Mr. Crawford as follows:

Q. Since your examination yesterday have you made an examination of the books of the improvement Co. to ascertain to whom the $78,000 of bonds were delivered by the Louisville Trust Co.?

A. The books won't show to whom the seventy-eight bonds were delivered, but I can tell you, I have inquired.

Q. Whom have you inquired of?

119 A. I inquired of Judge Richards. The seventy-eight bonds were delivered to George M. Pullman, Robert R. Hitt and John B. Carson.

Q. Delivered here in Louisville?

A. That was done through the trust Co. I don't suppose they were.

Q. Is not there anything whatever on the books of the improvement & contract Co. to show that transaction amounting to $78,000 of bonds?

A. There is a memorandum of credits for any money that was received.

Q. What book would that account be entered in?

A. It would be in the cash book in the first place, and then posted to the ledger.

Q. Those books are in this building, in President Richards' office?

A. Yes, sir.

Q. You examined them this morning?

A. Yes, sir.

Q. You got that information with regard to the delivery of these bonds to Pullman, Hitt and Carson, from Judge Richards?

A. Yes, sir.

Q. You did not investigate the books on that subject?

A. No, sir.

Q. Now I ask you to refresh your recollection by an affidavit on file of Dr. Breyfogle, and state whether you remember anything about the deposit of 292 bonds, $292,000, with the Louisville Trust Co. in March, 1890?

A. Down there this morning I saw some papers on this subject, that they had been deposited—Louisville Trust Co.'s receipts.

Q. You saw their receipts?

A. Yes, sir.

Q. That is among the files of the improvement Co.?

A. Yes, sir.

Q. Have you investigated since your examination yesterday for the purpose of ascertaining when the bonds now claimed to be held in pledge by the Louisville Trust Co. were handed over to them by the improvement Co.?

A. All the bonds that the trust Co. has were given to them by the contract Co.

Q. Have you investigated to find the different dates at which they obtained their custody.

A. The trust Co. people are going to look that up.

Q. Have you done so?

A. No; I didn't suppose there was any use of our both investigating the same thing.

120 Q. Don't you know, as a matter of recollection, that prior to the bringing of this suit that the trust Co. only had in pledge $125,000 of the guaranteed bonds?

A. I do not.

Q. Don't you know as a matter of fact that when they received the $292,000 of bonds that were embraced in the notice sent out to the syndicate purchasers, that they only had $125,000 of the guaranteed bonds in pledge?

A. They are going to look up all those points, and so I did not look that up.

Q. Haven't you any recollection of your own, refreshed by the books and examination?

A. No, sir.

Q. Don't you know as a matter of fact that the Louisville Trust Co. have, since this suit was brought, and since the circular was issued by the Louisville Trust Co., March 21st, 1890, stating that they had 292 bonds, that they have taken some of those, and claim to hold them in pledge for the debt due by the improvement Co. to the trust Co.?

A. Yes, sir; I think they have got some of those same bonds down there as collateral.

Q. They have got 211, haven't they?

A. They had a total of 336 bonds, 125 and 211.

Q. And is not the latter 211 a part of the same $292,000 of bonds referred to in the circular of the Louisville Trust Co., dated March 21st, 1890?

A. Yes, sir; I think they are.

Q. When did they get them?

A. They got them at different dates, from time to time.

Q. What dates?

A. I don't know. They will furnish a statement showing that.

Q. Didn't you look this morning so that you could state generally? Was not it in 1890?

A. I cannot say that it was.

Q. Can you say that it was not?

A. I don't think it was.

Q. Was it some time in 1891?

A. I don't know whether they got any in 1891 or not, I never looked that point up. I cannot say whether they got them all in 1890 or not. I would not be surprised if they got some in 1891.

Q. The fact that they are pledged is entered upon the books of the contract and improvement Co., is it not?

A. Yes, sir; a memorandum that they are pledged.

Q. Did you see a copy of the original printed circular of the Louisville Trust Co. among the papers of the improvement Co. when you were examining them?

121 A. I think that paper that you have is a copy of the paper that I saw there.

Q. Did the improvement Co. deposit with the Louisville Trust Co. at any time in March, 1890, any bonds in trust to be distributed to the syndicate of purchasers?

A. Yes, sir.

Q. If the Louisville Trust Co., on that transaction executed any receipt, or circular, and delivered the same, evidencing the deposit of that number of bonds with them, please produce the original for the purpose of having a true copy made as a part of your deposition?

A. I have one of the letters of the trust Co. issued at that time in regard to these 292 bonds, which were deposited with them. It is in words and figures as follows, to wit:

"OFFICE OF THE LOUISVILLE TRUST COMPANY,
LOUISVILLE, KY., *March 21st*, 1890.

DEAR SIR: The Ohio Valley Improvement and Contract Company has deposited with us, the Louisville Trust Company, two hundred and ninety-two of the first-mortgage bonds of the R., N. I. & B. R. R. Co., of the denomination of $1,000 each, principal and interest guaranteed by the endorsement of the Louisville, New Albany and Chicago Railway Co., which are held in trust by us, to be delivered to the syndicate of purchasers, of which you are a member. This is a fraction over one-fourth of the total, your proportionate share amounting as near as may be to three bonds of $1,000 each, which will be delivered to you upon your order, and the payment of the purchase price of ninety cents on the dollar, and accrued interest, at the rate of six per cent. from January 1st, 1890, the date from which the attached coupons begin to run. The checks should be sent payable to the order of the Louisville Trust Co. If you prefer it we will draw on you with the bonds attached, at sight, on the 5th day of April next.

Respectfully yours, LOUISVILLE TRUST CO."

Q. I understand that the deposit of these bonds appears on the books of the trust company?

A. I don't know about that.

Q. Was there any different arrangement so far as you know, about those 292 bonds, other than that evidenced by that receipt of the trust Co.?

A. At that time?

Q. Yes.

A. That is the only arrangement that I know about.

Q. Has there been any arrangement since that time different from this?

A. The bonds are not still in trust.

122 Q. When did they go out of the trust? When was that trust cancelled?

A. I don't know anything about that.

Q. Do you know that the trust was ever cancelled?

A. I don't know anything about that.

Q. When did you first know that the bonds, or some of the bonds embraced in this trust, and a part of the 292 bonds, were claimed by the Louisville Trust Co., to be held as collateral?

A. I don't know the dates.

Q. About when?

A. I don't know about when.

Q. How long was it after this?

A. It may have been any time within a year after this.

Q. Was it within a year do you think?

A. I presume it was.

Q. Was it within six months?

A. I cannot say.

Q. Was it within four months?

A. I cannot say.

Q. Is it not your impression that it was not?

A. It was within a year, and that is as near as I can come to it.

Q. What was the arrangement then that you think was within a year, in regard to these bonds?

A. The bonds were afterwards pledged to them on loans.

Q. You have among the books and papers of the improvement Co. the dates at which the pledges were made?

A. Yes, sir, when those pledges were made.

Q. I will ask you to produce them so that we can ascertain when those bonds became hypothecated.

A. The trust Co. is going to furnish a statement of that.

Q. I have a right to examine the improvement Co. as to that matter also. You examined the books this morning of the improvement Co., did you?

A. Yes, sir.

Q. And there are entries on those books with regard to this very transaction about which I inquire, showing the pledge of some of these bonds embraced in that trust receipt, with the dates, by the improvement Co.?

A. There are entries in regard to all pledges of bonds. The books are not in my custody. They are in the custody of the Louisville Trust Co. as assignee.

Q. They are also in the office of Judge Richards to which place we have adjourned for the purpose of taking this deposition?

123 A. Yes, sir.

Q. You examined them this morning?

A. Yes, sir.

Q. What books would these entries be on?

A. They are likely to be on any.

Q. What one?

A. It would be on the bills-payable for one.

Q. You saw the bills-payable book this morning?

A. Yes, sir.

Q. It is in the office of Judge Richards, where you are now?

A. Yes, sir. You can get all that information from the trust Co.'s books. They also kept books on it. The Louisville Trust Co. is making up the statement with regard to that, and they will furnish all that information. They have also looked at the books of the improvement Co. to ascertain the facts in regard to the matter.

Q. Have you got a list of the names of persons to whom the bonds were sold outside of the New York syndicate of $300,000?

A. Yes, sir; I will furnish that list.

By Judge RICHARDS: There is no objection to the witness examining the books for the purpose of giving a statement of matters asked for, provided some time is fixed for it when he can have the time to do it.

By Mr. CRAWFORD:

Q. Now I ask you to step into the next room, and get the bills-payable book, and turn to the first entry at which the first pledge is

made of any part of this $292,000 of bonds, and read off that entry, the date and amount of it?

A. I have not got the books in my possession.

WM. G. WETTERER, being duly sworn and examined by Mr. Crawford for the complainant, deposed as follows:

Q. Please state your name, residence and occupation?

A. Wm. G. Wetterer, assistant secretary and treasurer of the Louisville Trust Co.; residence Louisville, Ky.

Q. Were you officially connected with the Louisville Trust Co. in the years 1888 and 1890, and continuously until the present time?

A. In the years 1889 and 1890 I was book-keeper in the trust department of the Louisville Trust Co.

Q. And since then you have been connected with it?

A. Since March, 1892, I have been assistant secretary and treasurer.

Q. As such are you familiar with the books, papers and accounts of that company?

124 A. Yes, sir.

Q. Is the Louisville Trust Co. a creditor of the Ohio Valley Improvement & Contract Co.?

A. It is.

Q. Please refer to the books of the trust Co. and state when the trust Co. made its first loan to the improvement Co. the amount loaned, and what securities were hypothecated on that loan?

A. The first loan was made September 13th, 1889. It was on a note dated September 13th, 1889, at four months, with 216 first-mortgage bonds of the Richmond, Nicholasville, Irvine & Beattyville Railroad Co., as collateral. The amount of the note was $100,000.

Q. Have you got the numbers?

A. No. 1 to No. 216 inclusive.

Q. Was it a note of the Ohio Valley Improvement & Contract Co.?

A. Yes, sir.

Q. Any personal endorsers or guarantors on it?

A. No, sir.

Q. That is the only security?

A. No, sir. There was certificate No. 7 for 2,160 shares of the stock of said Beattyville Railroad Co.

Q. Did the Louisville Trust Co. retain these 216 bonds until the full maturity of that note, or what disposition was made of them?

A. No, sir. We retained them from the 13th of September, 1889, to the 20th of November, 1889, when they were withdrawn by the Ohio Valley Improvement & Contract Co., to be exchanged for endorsed bonds, and in their stead Nos. 647 to 771, both inclusive, were substituted as collateral on said note, dated September 13th, 1889.

Q. Please explain a little more fully what you mean by endorsed bonds?

A. Bonds endorsed or guaranteed by the Louisville, New Albany & Chicago Railway Co. They were withdrawn to have that endorsement placed on them.

Q. Are you testifying about this matter simply from your mere personal recollection, or have you some original documents or papers that evidence the transaction; if so kindly produce the same so that a copy may be attached?

A. I am testifying from the receipt given by the Ohio Valley Improvement & Contract Co., dated November 20th, 1889, a copy of which is in words and figures as follows, to wit: "Received of the Louisville Safety Vault & Trust Company 216, first-mortgage bonds of the Richmond, Nicholasville, Irvine & Beattyville Railroad
125 Co., numbered from No. 1 to No. 216 inclusive, $1,000 each, with all the coupons attached thereto, the said bonds having this day been delivered to us for the purpose of enabling us to forward same per express to New York in order that they may have placed thereon the engraved guarantee of the Louisville, New Albany & Chicago Railway Co., as per contract and agreement of said company, said bonds having been pledged to said trust Co. as collateral security on a note for $100,000, dated September 13th, 1889, at four months. Witness our hand this November 20th, 1889, Ohio Valley Improvement & Contract Co., by Wm. Cornwall, Jr., secretary and treasurer."

I will state by way of explanation that the then corporate name of the Louisville Trust Co. was "The Louisville Safety Vault and Trust Co."

Q. Kindly state whether there is any written agreement that you should get back not the 216 bonds, but only 125, and if so who made that arrangement or agreement?

A. I don't know.

Q. That note of September 13th, was not paid at maturity?

A. No, sir; it was renewed on January 30th, 1890.

Q. As of the date of January 16th, 1890?

A. Yes, sir.

Q. Did your company retain bonds numbered from No. 647 to 771, after November 21st, and down until the date of the renewal on January 16th, 1890?

A. Yes, sir.

Q. Have you got a copy of the note, or have you got the original note of January 16th, or has that been renewed?

A. That note has been renewed, but I have a copy of it here.

Q. Will you kindly read the copy of the note as part of your answer?

A.—

"LOUISVILLE, KY., *January 16th*, 1890.

Six months after date we promise to pay to the order of the Louisville Trust Company, one hundred thousand dollars value received, negotiable and payable at the office of said company, with interest thereon from maturity until paid, at the rate of seven per cent. per annum, payable semi-annually, viz: on the — day of ——,

and —— of each year during the existence of this loan. And we pledge, first, as security therefor, and second as security for any other debt we may owe said company, the following collaterals, to wit, one hundred and twenty-five first-mortgage bonds of the Richmond, Nicholasville, Irvine & Beattyville Railroad Company, numbers 647 to 771 inclusive. And agree that said collaterals may be sold at our expense, by public outcry, at any place in the city of Louisville, on ten days' notice, in writing, to the undersigned, for purpose of paying said indebtedness, provided it is not paid when due or demanded.

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OHIO VALLEY IMPROVEMENT AND CONTRACT COMPANY,
By A. E. RICHARDS, *President.*"

That has the following endorsement on it:

"The bonds mentioned within were withdrawn by the Ohio Valley Improvement and Contract Company, and in lieu thereof the said company has deposited as collateral on this note one hundred and twenty-five (125) bonds, first mortgage, of the Richmond, Nicholasville, Irvine & Beattyville Railroad Company, Nos. 1051 to 1175 inclusive, $1,000 each, principal and interest guaranteed by the Louisville, New Albany & Chicago Railroad Company. This March 17th, 1890, Ohio Valley Improvement and Contract Company, by Wm. Cornwall, Jr, treasurer."

Q. Is that the only document with reference to the transaction of which you know anything officially?

A. I have the original note cancelled, here before me.

Q. That is the original of which you have read a copy?

A. Yes, sir.

Q. Did you have any personal knowledge of this matter at the time that it occurred, or is your knowledge with regard to it simply derived from your recent examination of the papers and files of the trust company?

A. My knowledge is simply derived from a recent examination of the papers.

Q. You know nothing beyond the face of the papers?

A. No, sir.

Q. Was that note of January 16th, paid or renewed?

A. It was renewed on the 29th of July, 1890, by a new note dated July 19th, 1890, and due in four months from the date thereof.

Q. For how much?

A. For $100,000, with the following collateral, two hundred first-mortgage bonds of the Nicholasville, Irvine & Beattyville Railroad Company, for $1,000 each, Nos. 1051 to 1175, both inclusive, and Nos. 1620 to 1694, both inclusive.

Q. Was there any endorsement on that of any change in the collateral or did that remain?

A. That remained as it was.

Q. Was that last note paid at maturity in November, 1890, or renewed?

A. That note was renewed on the 5th of December, 1890,
127 as of November, 22nd, 1890, at four months, with the same collateral as on the previous note.

Q. That carries us to March, 1891. Was the note dated November 22nd, 1890, paid or renewed?

A. On March 23rd, 1891, the Ohio Valley Improvement and Contract Company, executed a note, dated March 17th, 1891, due July 1st, 1891 fixed, for $125,000, which included the one hundred thousand dollar note, dated November 22nd, 1890, with four hundred first-mortgage bonds of the R. N. I. & B. R. R. Co., of $1,000 each, Nos. 1051 to 1175, both inclusive; Nos. 1620 to 1694, both inclusive; Nos. 1401 to 1450, both inclusive; Nos. 1186 to 1198, both inclusive; Nos. 1751 to 1787, both inclusive; Nos. 2301 to 2375, both inclusive; Nos. 2176 to 2200, both inclusive.

Q. What was the extra $25,000 for? Was that a fresh loan?

A. Yes, sir.

Q. State whether or not there was any change in this collateral during the maturity of the last paper you have mentioned; and if so what change?

A. There was a change. The note was endorsed in this way: "We have received of the Louisville Trust Company bonds No. 1638 to 1694 inclusive, and in lieu thereof, we have returned to said trust company, viz: Nos. 891 to 900 inclusive; 1001 to 1005 inclusive; Nos. 1008 to 1020 inclusive, and Nos. 1022 to 1050 inclusive, to correct a mistake heretofore made by said trust company, in surrendering endorsed bonds in an exchange made for our accommodation. Ohio Valley Improvement and Contract Company, by A. E. Richards, president."

Q. Have you got the original of that note with the endorsement?

A. Yes, sir.

Q. When was this endorsement put there?

A. I cannot tell you; there is no date.

Q. When was it put there?

A. I don't know.

Q. Did you see it when it was put there?

A. No, sir.

Q. What is the date that the transaction bears on the books?

A. I cannot tell you. As near as I can come to it from the investigation I have made it was July, 1891.

Q. What investigation have you made with regard to it to fix the date?

A. I have looked at the books of the Ohio Valley Improvement & Contract Company. Then there is another exchange made that we had no record of either.

128 Q. Was that paper dated March 17th, 1891, and due July 21st, 1891, paid?

A. No, sir.

Q. Please state whether or not the books and records of the trust Co. do not show that besides these 57 guaranteed bonds that were delivered over according to the memorandum that you have just read, there were not also 100 additional guaranteed bonds that

came into the custody of the trust Co. while that note was running.

A. There were 100 guaranteed bonds Nos. 901 to 1000, pledged as collateral on this debt, dated March 17th, 1891, for $125,000, in lieu of numbers 2301 to 2375, both inclusive, and Nos. 2176 to 2200, both inclusive, of the unendorsed bonds.

Q. You get that from your official register?

A. No, sir.

Q. Where did you get it from?

A. I got it from the securities themselves.

Q. The securities themselves that you have here now would not show the date when you got them?

A. No, sir; and I have not given the date. I cannot give the date.

Q. You gave the date as being while this note was running?

A. This note is still running.

Q. I meant during its maturity?

—. ——.

A. Do you know the time at which the exchange of this $100,000 of bonds numbered from 901 to 1000, being guaranteed bonds, were pledged in lieu of the unguaranteed bonds?

A. I only know from the books of the Ohio Valley Improvement & Contract Co., which shows that these numbers of bonds were delivered to us on the 8th of July, 1891.

Q. There is nothing in the books of the trust Co. which shows it?

A. No, sir.

Q. That last note, if I understand, is still outstanding and unpaid, and has not been renewed. Is that correct?

A. That is correct.

Q. At what time was it due?

A. July 1st, 1891, fixed.

Q. Is there any date showing the exchange of the 57 bonds?

A. No, sir.

Q. You cannot fix the date of the exchange of the 57 bonds?

A. Except in the same way that I fix the date of the 100.

129 Q. That is by the books elsewhere?

A. Yes, sir.

Q. Is the Louisville Trust Co. the creditor of the Ohio Valley Improvement & Contract Co. on any other account than the note of $125,000 which you have testified is still unpaid and past due?

A. Yes, sir; there is one note dated March 10th, 1891, due in 60 days, for $50,000 on which the following collateral is pledged: 133 first-mortgage bonds of the R. N. I. & B. R. R. Co., for $1,000 each, and 30 bonds $1,000 each, of the Ohio Valley Improvement & Contract Co., secured by a mortgage on real estate. The R. N. I. & B. bonds are numbered as follows: No. 2201 to 2250, both inclusive; No. 2251 to 2292, both inclusive, No. 798 to 838, both inclusive. The real-estate bonds are numbered from 1 to 30, both inclusive. That is the collateral that was given to that note when made.

Q. Was that renewed?

A. No, sir.

Q. Has there been any additional collateral?

A. No, sir. There is also another note dated July 29th, 1891, payable October 1st, 1891, fixed, for $3,743.05, with thirteen first-mortgage bonds of the R. N. I. & B. R. R. Co., No. 768 to 780, both inclusive, pledged as collateral.

Q. On any of this paper was there any personal or collateral guarantees or securities?

A. No, sir.

Q. No endorsements of any individuals?

A. No, sir.

Q. Have you found among your papers a copy of the circular that was issued by this company on the 21st of March, 1890, with regard to the deposit of $292,000 of bonds?

A. No, sir; I have not found any among our papers. I have found a copy of that kind with the papers of the Ohio Valley Improvement and Contract Co.

Q. Do you remember the issuing of that circular?

A. No, sir; I do not.

Q. What do your books show with regard to the delivery of seventy-eight of these bonds that were referred to in that circular?

A. I do not find anything in the books regarding that at all.

Q. Are there no books showing that seventy-eight of these bonds were delivered to John B. Carson, George M. Pullman, and R. R. Hitt, or their order?

A. No, sir.

Q. Is not there any showing on your books that verifies
130 that receipt which the Ohio Valley Improvement and Contract Co. holds, showing that there were $292,000 of guaranteed bonds deposited with your trust company here, on March 21st, 1890, for distribution to syndicate purchasers?

A. No, sir; there is nothing on the books to show.

Q. Did you look among the correspondence to see whether there was any correspondence about it?

A. I looked everywhere, and I cannot find any record of it anywhere.

Q. Have you looked among the correspondence to see whether these circulars were not sent out?

A. I looked at all the papers that I thought had any bearing on the case at all.

Q. Are your books of correspondence in the vault?

A. Yes, sir.

Q. Under the custody of the time lock?

A. No, sir; they are in the book vault.

Q. The Louisville Trust Co. is the assignee of Wm. Cornwall, Jr., and Cornwall & Bro.?

A. Yes, sir.

Q. Under such assignments the Louisville Trust Co. holds, does it not, for each of those trust estates, certain of the guaranteed bonds of the Beattyville Company?

A. They hold bonds. I don't know whether they are guaranteed or not.

Q. Will you kindly file in response to this interrogatory a statement of the serial numbers of the bonds held for account of Wm. Cornwall & Bro., and particularly the serial numbers of guaranteed bonds held for the account of Cornwall & Bro.?

A. I will.

VERNON D. PRICE, being duly sworn and examined by Mr. Crawford, for complainant, deposed as follows:

Q. Please state your name and residence?

A. Vernon D. Price, Louisville, Ky.

Q. Were you ever connected with the Ohio Valley Improvement & Contract Co., as stockholder or officer?

A. I am a stockholder. I never was an officer?

Q. You were a stockholder from the origin, were you?

A. Yes, sir.

Q. You knew the contract made by Judge Richards representing the improvement Co. with the New Albany Co., with regard to the guarantee by the latter company, of the bonds of the Richmond, Nicholasville, Irvine and Beattyville Co., did you?

A. I did.

131 Q. You subsequently bought some of those bonds guaranteed, didn't you?

A. I have found in the last few weeks in looking over my bonds that I had some.

Q. How many?

A. Four.

Q. What are their numbers?

A. No. 294, No. 293, No. 1007 and No. 1021.

Q. Are those all that you ever did hold?

A. No, I had five, I think five, but I sold some of my bonds probably a year ago, and took them out at random. I did not notice at the time, or until this question came up, that I had disposed of any of those that were guaranteed.

Q. How many did you dispose of?

A. One.

Q. To whom?

A. I don't know. I sold through a broker.

Q. As I understand, you never owned but five?

A. No, sir.

Q. And of the five you still own four?

A. Yes, sir.

Q. One guaranteed bond you parted with about a year ago inadvertently?

A. Well, it probably may have been over a year.

Q. Do you hold any as collateral?

A. No.

Q. You hold all told, of guaranteed and unguaranteed, about sixteen?

A. Either twelve or sixteen.

Q. You do not hold any guaranteed bonds as collateral security or as trustee of any other owner?

A. No, sir.

Q. Did you make sale of some of these guaranteed bonds about the time of their issue?

A. At the time the company had them for sale I sold some around.

Q. Who employed you to make sale of them? Did you have a contract for making the sale of them, or a commission?

A. No, I was just interested in the company, and I knew a great many people around through the town, and saw them and got them to take them.

Q. In what official capacity were you with the Ohio Valley Improvement Company?

A. Not in any official capacity.

Q. You were interested in the enterprise, and around the office?

132 A. Only as a stockholder.

Q. You were interested as a stockholder?

A. Yes, sir.

Q. Did you sell these bonds under an employment by Judge Richards for a commission, or give your services in the matter gratuitously?

A. In making the sale I went around, as I did to a great many of those who had those securities, to people that I knew, and got them to take some. A great many went up and took bonds after I told them about it—went up to the office.

Q. I am asking you whether you were employed for a commission on the sales that you made, or received a commission?

A. I believe in one instance I got a small commission.

Q. Who did you make sales of the bonds to?

A. Well, I don't remember now. There was several. I remember Newhouse & Co.

Q. How many did they buy about?

A. I think he took $10,000.

Q. Did he pay for them to you in cash?

A. No, he did not pay me at all.

Q. You simply got him to agree to take the bonds?

A. Yes, sir, just went down and got his name.

Q. You got his name?

A. That is all.

Q. On a paper agreeing to take the bonds?

A. Yes, sir.

Q. The people that you saw sign that kind of a subscription paper? You were trying to make up a syndicate in Louisville and around, to place a large number of bonds?

A. That is it.

Q. All the persons you saw sign these purchase contracts agreeing to take the bonds?

A. No, by no means.

Q. I don't mean all you saw, but all you finally concluded arrangements with signed subscription papers?

A. I think there was half a dozen or so took some bonds of me.

Q. Those people that you mention that agreed to take bonds, how was their agreement evidenced? Was it by written signature to a paper which you asked them to sign, agreeing to take the bonds?

A. That is the way that it was.

Q. And the paper you delivered back to the improvement Co. with the signatures to it?

A. Yes, sir.

133 Q. Do you recollect anybody else except Newhouse?

A. Well, I think Mr. Ledman took some. I went out at different times off and on during a year or two for the Louisville Southern and the K. & I. Bridge Co., and I don't remember about this special transaction.

Q. Can you remember anybody's names except the one or two you have given?

A. Well, I think Dr. Barnes took ten, but afterwards backed out. I remember now that he did.

Q. He took ten and backed out?

A. Yes, sir; they let him off, I believe.

Q. Did Dillingham agree to buy through you, or through somebody else?

A. I did not see Dillingham.

Q. Who prepared these papers for you that you got these folks to sign?

A. I don't remember.

A. E. RICHARDS, recalled by his own request, testified as follows: I was asked on yesterday for a detailed statement of what had been done with the $585,000 of bonds that were guaranteed on March 11th. I answered that the statement made in the answer of the Ohio Valley Improvement & Contract Co. in this case was correct—that is, that $292,000 of them had been immediately after they were guaranteed, deposited with the Louisville Trust Co., in trust for the syndicate of purchasers, to be delivered to them as paid for; that of those $78,000 had been delivered to the purchasers before the institution of this suit, and of the remaining $293,000 of such bonds, $125,000 had been hypothecated with the Louisville Trust Co. prior to their endorsement, and had been returned to them endorsed, and that the remaining 168 of the bonds had been since cancelled—the endorsement on them had been cancelled by the request of the Ohio Valley Improvement & Contract Co. I was then asked what went with the remaining 214 bonds deposited with the Louisville Trust Co.; as aforesaid, that being the number left after the $78,000 of bonds had been delivered to the purchasers. I was unable to answer then. Since then I have sent for our old book-keeper who is not now in our employment, Mr. L. V. Cassily, and with his assistance I have gone over the books, and I am able

now to give an itemized statement of the disposition of those bonds, and desire to do so.

Of the last $585,000 of bonds endorsed, $125,000 were
134 delivered to the Louisville Trust Co. under the pledge above referred to. $211,000 more of them have since that time been deposited with the Louisville Trust Co., as additional collateral for loans made prior and since the institution of this suit. Those bonds were deposited with the trust Co. as aforesaid, after advice with our counsel, Col. Thos. W. Bullitt, under an agreement with the trust Co. that they were to be held subject to the orders of the court in this case so far as said endorsement was concerned, and the president of the Louisville Trust Co. told me yesterday that his company was so holding them. When this action was instituted the individuals who were known as the syndicate of purchasers declined to take any more of the bonds under their agreement to purchase, and the pledging of them to the Louisville Trust Co. was after the purchasers had so declined to take them. Of the bonds with the guarantee which was cancelled by order of court $167,000 of them were delivered to the Richmond & Irvine Construction Co., with the guarantee cancelled. The seventy-eight mentioned as sold in the answer of the Ohio Valley Improvement & Contract Co. prior to the institution of this suit, of those twenty-six went to R. R. Hitt, of Illinois, twenty-six to George M. Pullman, of Chicago, and twenty-six to John B. Carson, of Chicago. These seventy-eight having been a part of the two hundred and ninety-two bonds that had been deposited with the Louisville Trust Co. in trust for the purchasers, they were delivered by the trust Co. and the payments made through the trust Co. Our books do not show what time the trust Co. received the money, but we received from the trust Co. the proceeds of the payment of one of the parties on April 4th, 1890, and from another on April 10th, 1890. Those two payments were from Messrs. Hitt and Pullman. Mr. Carson gave a note for his, and that note not being paid at maturity, we finally agreed to take back from Carson the twenty-six bonds for which he had given the note. We so cancelled his note in September, 1890.

The books show that on October 3rd, 1891, two of these bonds were charged to me. I have no recollection of the transaction, but if it is correct, they must be among the thirteen bonds that I now have, and which are pledged either at the Columbia Finance & Trust Co., or the Farmers' Bank of Kentucky, at Frankfort. I have been to the trust company this afternoon to examine those, but found their vault closed, and will write to the Farmers' bank tonight so that I will be able to ascertain whether I have those two bonds or not. If I have they shall be forthcoming to answer any order that the court may make in regard to them.

135 On October 5th, 1891, five of these bonds were deposited with Col. Thos. W. Bullitt, one of the attorneys in this case, as collateral security to indemnify some parties who had gone on an injunction bond for the Ohio Valley Improvement & Contract Co., and he gave this receipt for the bonds, which I have now before me and will read.

"LOUISVILLE, KY., *October 5th*, 1891.

Received of the Ohio Valley Improvement & Contract Co. the five bonds above mentioned, Nos. 1181, 1182, 1183, 1184 and 1185, as a pledge on the conditions set forth in the above writing. The said bonds are to be subject to the orders of the United States circuit court so far as the guarantee of the L., N. A. & C. railway is concerned.

(Signed) THOS. W. BULLITT."

The conditions referred to in that receipt are as follows:

"The Ohio Valley Improvement & Contract Co. desire to file a suit enjoining James McFadden and Cassidy from this day selling at public auction at the board of trade, $26,000 of the Richmond, Nicholasville, Irvine & Beattyville Railroad Company's mortgage bonds which this company has pledged to them as collateral security. Now this writing witnesseth, that in consideration of Thos. W. Bullitt and others signing the necessary bond to procure said injunction, the Ohio Valley Improvement and Contract Co. hereby deposits with said Bullitt $5,000 in R., N., I. & B. R. R. Co.'s first-mortgage bonds as a pledge to indemnify said sureties against any loss they may sustain by reason of the signing of said bonds."

On November 18th, 1891, the remaining twenty-three bonds were deposited with the Columbia Finance and Trust Co. under the following agreement:

"This agreement between the Ohio Valley Improvement and Contract Co. of the first part, and Dennis Long, E. T. Halsey, Vernon D. Price, Bennett H. Young, J. W. Stine, Wm. Cornwall, Jr., A. E. Richards, H. V. Loving, Thos. W. Bullitt, A. L. Schmidt, J. S. Bronaugh, Jno. H. Welch and E. R. Sparks of the second part, witnesseth: That whereas the second parties at the request of the first parties signed a covenant executed by the Richmond, Nicholasville, Irvine and Beattyville Railroad Co. to the county of Jessamine in compliance with the third clause of its subscription to the capital stock of said railroad company, and said first party by written agreement, dated the 14th day of October, 1890, bound
136 itself and assigns to indemnify each and every one of said sureties against loss by reason of their obligation upon said covenant; now in consideration of $23,000 par value of the first-mortgage bonds of the Richmond, Nicholasville, Irvine and Beattyville Railroad Company, this day delivered by the party of the first part to the parties of the second part, to be deposited with the Columbia Finance and Trust Co. upon the same conditions as the forty-five are now deposited, the party of the second part hereby releases said first party from its contract to indemnify them as sureties as aforesaid, but not to affect any of the county's remedies against the railroad. In testimony whereof the parties hereunto have signed their names, this 18th day of November, 1891." Then followed the signatures of all the parties above named.

On the margin of the paper, and as part of the agreement in the handwriting of Col. Thos. W. Bullitt, the attorney in this case, are the following words:

"Received of the Ohio Valley Improvement and Contract Co. the twenty-three bonds of the R., N., I. & B. Railroad Co., mentioned in the within agreement, to be held on the terms, and for the purposes therein stated, but with the understanding and condition that the guarantee of the Louisville, New Albany and Chicago Railway Co. thereon is to *he* cancelled under orders of the United States court in suit of L., N., A. & C. R'y Co. against the Ohio Valley I. & C. Co."

This transaction was attended to for the Ohio Valley Improvement and Contract Co. by Col. Bullitt, and this paper which I have just read from I received from his office, my recollection is, some time during the spring of 1892. I do not know what his intention was by the endorsement on the margin of the paper that I have read, but suppose it was the intention to make it a part of the receipt of the parties who signed the paper.

Objected to by counsel for complainant.

By the WITNESS: After the railroad Co. went into the hands of a receiver, and the obligation which it had given to Jessamine county for which these parties had bound themselves as sureties matured, Jessamine county demanded a performance of that obligation, which was to the effect that the railroad company would buy back from Jessamine county $75,000 of the railroad company's capital stock at thirty cents on the dollar and these individual sureties were forced to pay the money to Jessamine county, that is the sum of $22,500, and take the bonds that had been pledged as col-
137 lateral security. Mr. Wm. Cornwall having become insolvent in the meantime, the remaining twelve sureties paid the money and took the bonds. I got one of the guarantee bonds in the distribution, and have been endeavoring during the day to find where it is, and have not yet done so. I will do so, and report it to the examiner.

When I testified yesterday, I did not recollect the fact that I had ever handled any of these endorsed bonds except the four that I had originally bought. Each of the other eleven above-named parties got one or more of those bonds, and held them under the agreement endorsed on the margin of the contract. Col. Bullitt is out of the city today, and I have not been able to get the benefit of his recollection in regard to this transaction, but will do so before I close my deposition. It was under his advice as our counsel in this case that the Ohio Valley Improvement and Contract Co. made these several agreements, depositing the bonds, with the understanding that they were to be held subject to the orders of the court in this case, so far as said endorsements were concerned, it being the intention of the officers of the company to at all times have the bonds that might be embraced in the orders of the court forthcoming to answer any judgment that might be rendered concerning the same. As to the twenty-six bonds that the company agreed afterwards to take back from Mr. Carson, they were among those that had been sold before this suit commenced, but I have included them in the statement with those that still remain on hand.

The bond account, therefore, as to the 585 bonds, stands thus: Louisville Trust Co. 336, Richmond and Irvine Construction Co. 167 cancelled, R. R. Hitt 26, George M. Pullman 26, A. E. Richards 2, Thos. W. Bullitt trustee 5, Columbia Finance and Trust Co. syndicate 23, total 585.

One of the bonds held either by Richards or Bullitt trustee must have been among those cancelled by the orders of court, as there were 168 cancelled, and only 167 of them delivered to the Richmond and Irvine Construction Co. As a matter of fact there were only 168 of those bonds in the actual custody of the Ohio Valley Improvement and Contract Co. at the institution of this suit, but as the others came into the custody of the company as above stated after the proceedings had been pending, for the sake of being careful to observe the orders of the court we adopted the rule under the advice of Col. Bullitt, to require the parties who received them to enter into the agreement above stated to hold them subject to the orders of the court.

138 The deposition of THEODORE HARRIS on further cross-examination by counsel for plaintiff taken on the 30th day of April, 1894, is as follows:

THEODORE HARRIS, being duly sworn and further cross-examined by Mr. Helm as attorney for the plaintiff deposed as follows:

1. Were you a director of the Ohio Improvement & Contract Company?

A. Nominally, yes, sir.

2. When did you become a director?

A. About the time the company was organized.

3. How long did you continue a director?

A. I don't know. I don't remember.

3. Did you cease to be a director before March, 1890?

A. I think not.

5. Did you cease to be a director before the assignment of the company to the Louisville Trust Company?

A. I am not sure. I was absent from the city and country most of the time in Europe, during the time the contract company was in existence, and I really think that they elected me continuously without consulting me.

6. You were here about January, 1890, were you?

A. Yes, sir.

7. Now, having that date fixed in your mind can you state whether you were then continuously from that time until after the Breyfogle administration came into power?

A. Yes, sir; I know that I was. I know that I was here when the Breyfogle administration came into power.

8. Can you with reference to that date, fix how long after that approximately you stayed in town?

A. I think I was in town until ——, with some absences until August of that year.

9. 1890, Mr. Harris, you say you were a director, nominally. Did

you or not interest yourself to obtain, and did you not obtain subscriptions to those bonds for the contract company?

A. I did.

10. Did you attend some of the meetings of the directors of that company?

A. A few of them in the early history of the company.

11. Did you attend some of the meetings about the time this contract was obtained or made, between the improvement company and the Louisville, New Albany & Chicago Railway Company?

A. I don't remember.

139 12. The minute book, I presume, will show?

A. I suppose the minute book will be correct.

13. Did you ever at any time have any of the guaranteed bonds of the R., N., I. & B. R. R. Co., in pledge to your bank bearing numbers above 600?

A. I don't remember. I don't know.

14. Did you ever at any time have any guaranteed bonds of that company in your bank, under pledge or otherwise, except the bonds mentioned in your answer?

A. I don't remember what my answer in that respect was. That answer was given some months ago. Whatever that answer is was true as I now suppose. I cannot remember numbers of bonds, and will say that our bank in lending upon bonds makes no record of the numbers.

15. Do you know what is the date of your first subscription for bonds?

A. I do not. The subscription paper in the hands of the contract company will show. I was one of the earliest subscribers, I know. The date could probably be ascertained from this fact—Judge Richards was visiting New York, and on his return he stated to me and to others that he had negotiated a lease of the R., N., I. & B. R. R., with the Monon, and that the directors of the Monon had subscribed for, or agreed to take so many of the new bonds, and the bonds were to be guaranteed by the Monon Railroad Company. Upon that statement, I, myself subscribed for bonds, not doubting that the statement was true.

16. That the bonds would be guaranteed, but they had not been guaranteed?

A. I am not sure whether the bonds were guaranteed at that moment or not, whether the guaranty was actually written on them at the moment of which I speak.

17. Can you approximate about the number of bonds that it was stated to you that these Monon directors would take?

A. I can only speak from memory. My memory is that ten or eleven directors had agreed to take $100,000 of the bonds issued.

18. And it was shortly after this agreement in New York that you made this subscription?

A. It was shortly after.

Redirect examination by Mr. MILLER:

19. As I understand you, when you actually made the purchase of these bonds, the guarantee was then on them?

140 A. When I received the bonds and paid for them, the guaranty was on them.

20. Did you make your subscription with the understanding that the guarantee was to be on them when you paid for them?

A. When I paid my subscription I understood that the guarantee was then on them, or was to be put on them.

21. Was it on them when you got them?

A. It was on them when I got them and paid for them. I paid ninety cents on the dollar for them cash, the whole subscription price. That is the price that all of us paid. I bought them because Judge Richards stated that the directors were going to hold them until they went to about 105, and then probably some would sell, and perhaps others would keep them altogether. I understood they were buying them for investment. They expected them to go to 105.

22. Could you fix the date of those two large loans to the Ohio Valley Improvement & Contract Company, upon which you took those bonds as collateral that the bank afterwards acquired by purchase?

A. No, sir. I could at the office, but I cannot now.

23. Will you determine those dates and give them to the stenographer? Will you make an effort to see if you can determine the fact, and then will you inform the stenographer?

A. I will.

By Mr. HELM:

24. If you obtain the information requested by Mr. Miller, you will please make a written statement of it, and give notice to me when you give it to the stenographer so that I may if I wish continue my cross-examination.

By Mr. MILLER:

25. If those two loans were made originally as a call loan, would that interfere with your fixing the date?

A. The last loan I know, was not made as a call loan. As to the first loan I am not sure, whether it was first as a call loan and then subsequently a time loan, or whether it was originally a time loan. If the loan was a call loan, it would interfere with the fixing of the date of the loan.

Q. Please explain what you mean.

A. Call loans are not so much defined in our books as time loans. They are entered simply as memoranda, with the note attached to the collateral, and the collateral not fully described, it not being expected that it will continue more than a few days.

27. Are they entered up at large in your bill book?

A. They are not entered in our bill book at all.

141 May 16th, 1894, Mr. Miller of counsel for the Louisville Banking Company this day handed me the letter of Theodore Harris, Esq., which is hereto attached, as his answer to interrogatory No. 23 of this deposition. I thereupon notified Mr. Helm of counsel for plaintiff who directed me to attach said letter to the deposition and file the same.

The letter above referred to is as follows:

(Letter-head of Louisville Banking Company.)

LOUISVILLE, KY., *May* 16, 1894.

Mr. Graham, Louisville, Ky.

DEAR SIR: As requested by counsel, I have had the bank's books examined, and they show that the Louisville Banking Co. made two loans to the Ohio Valley Improvement & Contract Co., secured by Beattyville bonds, viz:

1. $25,000 loaned May 15, 1890, and secured by 62 bonds; and
2. $25,000 loaned May 21, 1890, and secured by 63 bonds.

We have no way of determining how many of each set of bonds were guaranteed bonds, as our records do not give the individual numbers of the bonds, but the guaranteed bonds now owned by the bank are included in two sets. As before stated, I bought and paid for my own guaranteed bonds on or about January 2, 1890.

Yours truly, THEODORE HARRIS.

J. M. FETTER being duly sworn and examined by Mr. Crawford for the complainant deposed as follows:

Q. State your name, occupation and residence?

A. My name is J. M. Fetter. I am president of the Kentucky National bank, and reside in Louisville, Ky.

Q. Were you officially connected with the Louisville, New Albany & Chicago Railway Co. prior to March, 1890; if so in what capacity?

A. Yes, sir; I was a director of the Louisville, New Albany and Chicago Railway Co. prior to 1890.

Q. Were you present at the meeting of the board of directors of the Louisville, New Albany & Chicago Railway Co. which voted the contract between that company and the Ohio Valley Improvement & Contract Co.?

142 A. Yes, sir; I was present at that time.

Q. Were you interested in the Ohio Valley Contract & Improvement Co.?

A. No, sir; I was not.

Q. You had no stock or any interest in it?

A. I had no stock, and no interest whatever.

Q. You became, did you not, a subscriber for certain bonds of that company?

A. Yes, sir.

Q. Bearing the guarantee of the Louisville, New Albany & Chicago Railway Co.?

A. Yes, sir; I was a subscriber.

Q. The consideration for the guarantee by the New Albany Company of the bonds of the Beattyville Company owned by the improvement company was the delivery to the New Albany Company of seventy-five per cent. of the stock of the railroad company, was it not—the Beattyville Railroad Company?

A. I don't remember positively. My recollection is though that that was the contract.

Q. You mean by that that you have forgotten the percentage of the stock?

A. Yes, sir.

Q. The sole consideration was the transfer of a certain amount of the stock of the railroad Co.?

A. That is my recollection.

Q. How many of those bonds did you take under the subscription?

A. Twenty-five.

Q. Do you remember when you took them?

A. I do not. I could not state the time.

Q. How long did you hold them?

A. I did not hold them at all. I had them delivered and immediately transferred them to brokers through whom I sold them.

Q. Through what brokers, or to what persons did you sell them as near as you can remember?

A. Really, I don't remember now to whom.

Q. Cannot you give any of the names?

A. My recollection is that I sold ten of them to W. G. Osborne, and the others I cannot place now—to whom they were sold.

Q. You have never held any of the guaranteed bonds since that time?

A. No, sir; not individually.

Q. The bank has held some and now holds some?

A. Yes, sir; the bank now holds some as collateral.

Q. How many?

143 A. I could not say, probably twelve or fifteen.

Q. For any but one party?

A. Yes sir; I think we hold for Major Richards, and *and* I believe for Mr. Holman. That is all that I can remember.

Q. You hold as collateral then the bonds of Bernard Holman?

A. I think we hold one bond of his.

Q. Who else?

A. A. E. Richards. That is all I remember now.

Q. Didn't you have some of these bonds for Mr. Carson?

A. No, sir.

Q. Did you ever hold more than the one bond you now hold for Mr. Holman?

A. I think not. I don't think he borrowed money from us only on that bond.

Q. Do you remember how much you were a subscriber for?

A. $100,000.

Q. But there were only twenty-five taken up?

A. Yes, sir.

Q. That represents your connection with this transaction?
A. Yes, sir.

The affidavit of William Dowd is as follows:

In the Circuit Court of the United States for the District of Kentucky.

THE LOUISVILLE, NEW ALBANY & CHICAGO RAILWAY COMPANY, Complainant,
against
THE OHIO VALLEY IMPROVEMENT & CONTRACT COMPANY *et al.*, Defendants.

SOUTHERN DISTRICT OF NEW YORK, *City and County of New York*, } *ss*:

William Dowd, being duly sworn, says: I was during the year 1889, the president and one of the directors of the Louisville, New Albany & Chicago Railway Company, and took part in the meeting of directors on or about the 8th of October, 1889, at which the guaranty of the bonds of the Richmond, Nicholasville, Irvine & Beattyville Railroad Company by the Louisville, New Albany and Chicago Railway Company was authorized.

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There was at that time no agreement or understanding, express or implied, direct or indirect, pursuant to which I was to receive or to take any of the said bonds or any interest therein. I had at that time no intention to take any of the said bonds. There was not at that time any agreement to my knowledge on the part of any of the directors of the Louisville, New Albany & Chicago Railway Company, to take or to receive any of the said bonds.

The proposition of the Ohio Valley Improvement Company to give the Louisville, New Albany & Chicago Railway Company, seventy-five per cent. of the stock of the Beattyville Company, in consideration of a guaranty of the Beattyville Company's bonds, was received, entertained and acted upon by the directors of the Louisville & New Albany Company, solely in the interest of the Louisville & New Albany Company, and in pursuance of a settled policy of the then existing management, which had theretofore proved very beneficial to the company. That management took charge of the road in the year 1884. In that year the gross earnings of the company amounted to $1,564,436.39, the net earnings to $199,292, and the operating expenses to $1,365,144.39, while the insurance, rentals and interest amounted to $653,021.38, leaving a deficit of $453,729.38. The company was on the verge of bankruptcy and its stock was selling at about 15 cents on the dollar.

We were satisfied that the company had been brought to this condition by the fact that its more active and progressive rivals had absorbed a large part of the business which naturally belonged to it, and that an active and progressive policy afforded the only possibility of saving the road to the stockholders. We followed that policy, and the result is shown in the following table of earnings and expenses:

	1884.	1885.
Gross earnings	$1,564,436 39	$1,680,454 61
Operating expenses	1,365,144 39	1,332,035 90
Net earnings	199,292 00	348,418 71

	1886.	1887.
Gross earnings	$1,919,189 53	$2,295,623 82
Operating expenses	1,278,527 73	1,489,698 49
Net earnings	640,661 80	805,925 33

145	1888.	1889. About—
Gross earnings	$2,292,782 40	$2,495,000 00
Operating expenses	1,424,676 93	1,545,000 00
Net earnings	868,105 47	950,000 00

From a deficiency of over $450,000, in 1884, we earned a surplus of $105,000 in 1889. This was accomplished by active efforts to bring business into the road, in the course of which we purchased the Bedford & Bloomfield road, built the French Lick Springs road, and leased the Louisville Southern, all of these contributing largely to the increase of the business of the main line, and were approved and ratified by the stockholders of the company. In pursuance of the same policy and with the same object, and with no other object or interest, we, in 1889, made a further lease of the Lexington extension, branch of the Louisville Southern, and agreed to guarantee the Beattyville bonds upon acquiring three-fourths of the Beattyville stock.

I did not subscribe or agree to subscribe for any of those for several weeks or more than a month after the meeting of October 8th, when it was represented to me, that the effort to place the bonds was proving unsuccessful and was suffering because the persons interested in the Louisville and New Albany Company, who would naturally be familiar with the prospects and value of the Beattyville enterprise did not seem to have confidence enough to risk their own money in it. I then for the purpose of helping along the undertaking, and very reluctantly, subscribed for 100,000 of the bonds. I did that not because I wanted them or wished to make such an investment, but because I was willing to risk something for the purpose of aiding to secure the benefit for the Louisville and New Albany Company, which I was confident the building and control of the Beattyville road would prove to be.

Mr. Henry H. Cook and Mr. James A. Roosevelt are now, and ever since before the 1st of January of this year, have been absent in Europe.

WM. DOWD.

Subscribed and sworn to before me this 17th day of April, 1890.

[SEAL.] EDWIN B. ROOT,

Notary Public (133), *New York County.*

The affidavit of John B. Carson is as follows:

146 United States Circuit Court, District of Kentucky.

THE LOUISVILLE, NEW ALBANY & CHICAGO RAILWAY COMPANY, Complainant,
vs.
THE OHIO VALLEY IMPROVEMENT & CONTRACT COMPANY *et al.*, Defendants.
} Affidavit.

The affiant, John B. Carson, one of the defendants in the above-styled suit, states on oath that he was one of the directors, as well as the vice-president and general manager, of the L., N. A. & C. R. R. Co., during the year 1889, and until the 12th day of March, 1890. Some time during the spring of 1889, A. E. Richards, president of the Ohio Valley Improvement & Contract Company, brought to affiant's notice the R. N. I. & B. R. R. which was then under construction.

At the time the New Albany road had leased and was operating the main stem of the Louisville Southern R. R. and it was expected would lease and operate the Lexington extension of the same road which was then being built. Said Richards represented to me that the Beattyville road would branch off from the Louisville Southern at Versailles and would be a virtual extension of that line for about ninety miles, passing through three rich Blue Grass counties, and thence into the coal, iron, and timber regions of eastern Kentucky. He wished me to aid him in negotiating the sale of his bonds so as to insure the early completion of the road. I took the matter under consideration and had several interviews with him both in Kentucky and Chicago in regard thereto. I examined in person, a considerable part of the line and some of my subordinate officers rode over the remainder. This examination satisfied me that the Beattyville road would be a valuable feeder for the entire New Albany system, and from that time I took considerable interest in aiding him to effect a sale of the bonds. I introduced him to some bankers and other parties in Chicago, and recommended the enterprise, but he failed to dispose of the bonds to them. He then suggested the formation of a syndicate of investors to purchase one-half of the bonds. I told him we might get some of them subscribed for in Chicago, but that New York would be the better place. I
147 agreed to notify him when I would next visit that city, which I did. We met there, when I introduced him to Mr. Dowd, the president, and Mr. Root, the chief attorney of the New Albany road. The matter was talked over, but nothing accomplished. Later on we again met in New York, when he tried to get Mr. Roosevelt and Mr. Astor to take an interest in the matter. Mr. Roosevelt suggested that before taking any interest ourselves or recommending the investment to others an expert should be employed to examined the road and the resources of the country. He was requested to select the expert, and some one recommended to him Mr. Geo. S. Griscom, of Pittsburgh. The affiant had no personal acquaintance with Mr. Griscom, and believes that up to that

time he was not personally known to either Messrs. Dowd, Root, Richards, or Roosevelt. Mr. Griscom received his instructions from Mr. Roosevelt, made his examination, and reported the result to Mr. Dowd, as president of the Bank of North America, on July 24th, 1889. Prior thereto President Richards had prepared a written proposition for the sale of one-half of the bonds, dated June 19th, 1889, and left it with some one in New York, probably with Mr. Root. At any rate, Mr. Root, being about to make an extended trip to the far West, handed me said paper with his name signed thereto, to be used in case the syndicate was completed to take one-half of the bonds upon the terms therein specified. It was not contemplated that those of us interested in the New Albany road should do more than start the subscriptions and recommend the same to outsiders so as to secure the completion of the road. I never signed or agreed to sign that paper for any number of bonds, although I would have done so had there been any prospect of completing the syndicate; but before this could be done Hon. Robert R. Hitt, now member of Congress from Illinois, who was then a director in the New Albany Company, and continued to be until the 12th of March, 1890, after making personal examination of the property, suggested that the Beattyville road ought to belong to the New Albany system by some kind of contract between the two roads, and that the majority of stock ought not to be distributed among strangers. He suggested that it would be well for us to consider the policy of endorsing the bonds, in consideration of a majority of the stock. This was early in Sept., 1889. Shortly after this suggestion was made the proposition by which the syndicate was to obtain 51 per cent. of the stock was abandoned, and, so far as the affiant knows, no one ever signed the agreement, except
148 Mr. Root, and he signed it upon the condition above mentioned. I never gave said Richards any directions as to the proposition of the bonds or mortgage to carry out said written proposal or for any other purpose, and none of the other directors did, so far as I know or believe. On the 8th of October, 1889, the directors of the New Albany Company held a meeting in their offices in New York. President Richards was there upon the invitation of myself and others. He appeared before the board, explained the affairs of his company, the progress of the work, and the resources of the country. At his request we invited Prof. John R. Proctor, State geologist for Kentucky, to come before the board and be heard upon the resources of the country through which the road passed. After hearing Prof. Proctor, President Richards was recalled and a discussion arose as to what kind of a contract could be made. Among other things, we wanted the entire stock in case we made the endorsement, but when this was found impossible, on account of the county subscriptions already made, 75 per cent. was named, and the other details of the contract subsequently executed were agreed upon, and the board, including Mr. Postlewaite, who is now vice-president, voted unanimously to guarantee the bonds. At no time before this meeting nor during the same, did I have any understanding with President Richards, or any one representing him,

that the original proposition shall be altered or that I would vote for the resolution guaranteeing the bonds, nor do I believe any other director had such agreement or understanding. At the time of said meeting I had no contract or understanding with said Richards, by which I was to subscribe for any of said bonds, in case they were guaranteed. I believed that the Beattyville road would prove a valuable acquisition to the New Albany system, and for that reason voted for the resolution, and believe the other members of the board were controlled by the same motive. It had been the settled policy of the New Albany road for years to get an outlet across Kentucky to the south and to the seaboard, and I believed that the acquisition of the Louisville Southern and the Beattyville roads to be a long stride in that direction. I left New York for Chicago immediately after the meeting of October 8th. I did not see the proposition for the new syndicate until about the 1st of November, 1889, when President Richards presented it to me in Chicago and requested me to sign it, which I did. In subscribing for the bonds I considered that I was paying their full market value, and would not have made the subscription except for the purpose of
149 advancing the interests of the New Albany system. At the same meeting of the board on October 8th, a resolution was passed authorizing the lease of the Lexington extension of the Louisville Southern, and to the best of my recollection that resolution was passed before the one guaranteeing the Beattyville bonds, but of this I am not sure. The affiant believes that with a continuous line from Chicago to Beattyville, the short link between the latter point and the Virginia and Tennessee systems of roads beyond the Cumberland would soon be built, giving the long-desired connections, as well as the benefit of the traffic along the line. The contract by which the New Albany road agreed to guarantee the bonds of the Beattyville road was not drawn up until after the board meeting on the 8th of October, and could not have been, because its terms were not fixed until said meeting, nor was it understood what they should be. Under that contract the Ohio Valley Company was to protect the interest on the bonds for one year after the completion of the road. It was and still is my opinion that after that period, if not before, the Beattyville road will be able to earn its fixed charges, including the interest. I have had many years' experience in railroading. I believed that the New Albany road would become the owner of the Beattyville road without the expenditure of a dollar.

John B. Carson, being duly sworn, says that the statements in the foregoing affidavit are true.

JOHN B. CARSON.

Subscribed and sworn to before me this 17th day of April, 1890.

[SEAL.] C. V. CHISNELL,
N. P., Jeff. Co.

In the Circuit Court of the United States, District of Kentucky.

THE LOUISVILLE, NEW ALBANY & CHICAGO RAILWAY COMPANY, Complainant,
against
THE OHIO VALLEY IMPROVEMENT & CONTRACT COMPANY *et al.*, Defendants.

SOUTHERN DISTRICT OF NEW YORK, *City and County of New York*, } ss.:

Elihu Root, being duly sworn, says: I was, during the
150 year 1889, one of the directors of the Louisville, New Albany & Chicago Railway Company. I took part in the meeting on or about October 8th, 1889, when the guarantee of the bonds of the Richmond, Nicholasville, Irvine & Beattyville Railroad Company was authorized.

Half of those bonds had been offered for sale in New York in the early summer of 1889, with an agreement that fifty-one per cent. of the stock should go with the bonds. At that time I expressed a willingness to become one of a syndicate to purchase these bonds, and left with Mr. Dowd my signature to a proposed syndicate agreement. No one else, however, signed the paper, and it was never delivered and the matter fell through.

The proposition which was made in the following October to the Louisville & New Albany Company to give that company three-fourths of the stock in consideration of its guaranty was a new and independent proposition, having no relation whatever to the proposed arrangement of the previous June.

I voted to accept the proposition because I believed it to be exceedingly advantageous for the Louisville & New Albany Company, and was moved thereto by no other consideration than the interests of that company.

There was at that time no agreement, expressed or implied, direct or indirect, under which I was bound to take or was entitled to have any of the said bonds.

The Ohio Valley Improvement Company was then, and continued, after the execution of the agreement for guaranty, at full liberty to sell the said bonds to whomsoever they pleased and for whatever price they would get. I had not, nor, to my knowledge or belief, did any of the directors have any rights against that company, or rest under any obligations to it in respect of the said bonds.

I should think that it was a week or so after the 8th of October when the guaranty was authorized by the directors, and after the agreement for guaranty was executed, that the subscription paper for the bonds was presented to me and I subscribed for fifty. Several weeks after that, the subscription not being filled, and the effort to place the bonds in New York appearing likely to fail unless some additional impetus was given to it, and after a visit to New York by Judge Richards and Professor Proctor, the State geologist of Kentucky, and receiving further information from them as to the

merits of the enterprise, I subscribed for fifty more of the said bonds. This was at the same time that Mr. Dowd made his subscription.

At that time, to my knowledge, the bonds had been offered
151 through brokers and by direct application, very generally, in the city of New York, at the same price at which I subscribed. Most of the persons applied to had refused to invest in them, and only about one-half of the amount offered had been taken. Most of the subscriptions which had been made had been procured by the earnest efforts of persons interested in the Louisville & New Albany Company, who sought to place the bonds because of the benefit which that company would derive.

ELIHU ROOT.

Subscribed and sworn to before me this 7th day of April, 1890.
[SEAL.] EDWIN B. ROOT,
Notary Public (133), *New York County.*

In the Circuit Court of the United States, District of Kentucky.

THE LOUISVILLE, NEW ALBANY & CHICAGO RAILWAY COMPANY, Complainant,
against
THE OHIO VALLEY IMPROVEMENT & CONTRACT COMPANY *et al.*, Defendants.

Joel B. Erhardt, being duly sworn, says: I was, during the year 1889, one of the directors of the Louisville, New Albany and Chicago Railway Company. I took part in the meeting on or about October 8th, 1889, when the guaranty of the bonds of the Richmond, Nicholasville, Irvine & Beattyville Railroad Company was authorized.

I had, at that time no agreement or understanding, expressed or implied, direct or indirect that I should take or should be entitled to receive any of the said bonds. I had never had anything to do with any syndicate or arrangement regarding the said bonds, and I considered and acted upon the proposition for guaranty, solely with reference to the interests of the Louisville and New Albany Company.

Several weeks after that, I was asked to subscribe for some of them, and I subscribed for twenty. I was quite indifferent whether I took them or not as I considered the price to be fully as much as they were worth. I subscribed for them not because they were a particularly good investment, but because I wanted to help along an enterprise which I thought would benefit the Louisville and New Albany Company.

JOEL B. ERHARDT.

152 Sworn and subscribed to before me, a notary public in and for the District of Columbia, this eighteenth day of April, 1890.
[SEAL.] J. Y. KNIGHT,
Notary Public.

DISTRICT OF COLUMBIA, *ss:*

Clerk's Office of the Supreme Court of the District of Columbia.

I, R. J. Meigs, clerk of the said court, do hereby certify that J. Y. Knight, Esq., whose name is subscribed to the certificate of the proof or acknowledgement of the annexed instrument in and for the said District, dwelling therein, commissioned, sworn, and duly authorized to take the same. And further, that I am well acquainted with the handwriting of said J. Y. Knight and verily believe that the signature to the said certificate of proof or acknowledgment is genuine, and the said instrument is executed and acknowledged according to the laws of this District.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court this 18th day of April, A. D. 1890.

[SEAL.] R. J. MEIGS, *Clerk*,
By L. P. WILLIAMS,
Assistant Clerk.

This deed made and entered into this 24th day of January, 1881, by and between the Merchants' National Bank of Cincinnati, Ohio, a corporation duly organized under the national bank act and Daniel J. Fallis, trustee of Covington, Kentucky, of the first part and the Louisville, New Albany and Chicago Railway Company, of the city of Louisville, Kentucky, of the second part.

Witnesseth, that the said parties of the first part for and in consideration of the sum of five thousand five hundred dollars cash in hand paid the receipt of which is hereby acknowledged do hereby sell, grant and convey to the said second party its successors and assigns the following-described property, viz: A certain lot or parcel of land lying and being in the city of Louisville, Kentucky, and bounded as follows, to wit: Beginning at a point on the south line of Duncan street distant one hundred and eighty (180) feet west of the southwest corner of Duncan and Fourteenth streets running thence northwardly and fronting the south side of Duncan street sixty (60) feet and extending back southwardly of equal width one hundred and ninety-five (195) feet to an alley or Columbia
153 street, being the same property conveyed said Daniel J. Fallis, trustee, by the Merchants' National Bank of Cincinnati, Ohio, by deed dated April 18th, 1880, of record in Deed Book Number 232, page 599, Jefferson county court clerk's office and the same conveyed said Merchants' National bank by the sheriff of Jefferson county, Kentucky, by deed of record in Deed Book Number 145, page 457, Jefferson county court clerk's office. To have and to hold the same with all the appurtenances thereon to the said second party, its successors and assigns forever with covenant, warranty and against all incumbrances except the taxes of 1881, which said second party is to pay.

Witness my hand and seal the day and year first above written.

[SEAL.] D. J. FALLIS,
Trustee for the Merchants' Nat'l B'k of Cincinnati, Ohio.

In witness of the foregoing indenture the Merchants' National Bank of Cincinnati, Ohio, has caused its corporate seal to be affixed hereto by its president, and this deed to be signed by its president and attested by its secretary pursuant to vote of its board of directors regularly made and entered on its corporate records.

THE MERCHANTS' NAT'L B'K OF CINCINNATI, OHIO,
By D. J. FALLIS, *P't.*

[Mer. Nat'l Bank Seal of Cin., O.]

Attest: H. C. YERGASON,
Cashier Merchants' National Bank of Cincinnati, Ohio.

STATE OF OHIO, }
County of Hamilton, City of Cincinnati, } *sct:*

I, James D. Henry, a notary public in and for the county of Hamilton and State of Ohio aforesaid, duly appointed and commissioned and authorized by law to take and certify acknowledgements of deeds and other writings, do hereby certify that the foregoing deed from the Merchants' National Bank of Cincinnati, Ohio, a corporation, and Daniel J. Fallis, trustee, to the Louisville, New Albany and Chicago Railway Company, was this day produced to me in my office, in the county and State aforesaid. by the grantors, and said deed was then and there signed and sealed and acknowledged by said Daniel J. Fallis to be his act and deed as such trustee, and to be the act and deed of the said Merchants' National Bank of Cincinnati,
154 Ohio, by him as its president, duly authorized in the premises, and that the seal thereto attached is the seal of said bank and that said deed was executed and for the uses and purposes therein mentioned and they consented that the same be recorded and at the same time H. C. Yergason, cashier of said bank, affixed the official seal of said bank to said deed and attested the same by his signature as such cashier.

Given under my hand and notarial seal this twenty-fifth day of January, 1881.

[SEAL.] JAMES D. HENRY,
Notary Public for Hamilton County, Ohio.

I, Wm. E. Loran, clerk of the county court of Jefferson county, in the State of Kentucky, do certify that on this day the foregoing deed was produced to me in my office and that I have recorded it and the foregoing certificates in my said office.

Witness my hand this 17th day of February, 1881.

WM. E. LORAN, *Clerk.*

STATE OF KENTUCKY, }
County of Jefferson, } *sct:*

I, Geo. H. Webb, clerk of the county court within and for the county and State aforesaid, do certify that the foregoing 4 pages contain a true, correct and complete copy of deed between Nat'l Bank of Cincinnati, Ohio, and the Louisville, New Albany & Chi-

cago Railway Company together with the certificates of acknowledgement and record thereto attached, as the same is now of record in my office as clerk aforesaid. Said deed is recorded in Deed Book No. 239, page 82, county clerk's office aforesaid.

In testimony whereof, and that the foregoing — truly and completely copied from the records of the court aforesaid, I, Geo. H. Webb, clerk of said court, hereunto set my hand and affix the official seal of Jefferson county, Kentucky, of which I am the custodian, at Louisville, Kentucky, this 19th day of April, 1890.

[SEAL.] GEO. H. WEBB,
Clerk Jefferson County Court, Ky.

This deed between Bridget Giltenan (formerly Scanlin), widow Patrick Giltenan, and Annie his wife, and Catherine Giltenan, unmarried, of the first part, and the Louisville, New Albany and Chicago Railway Company, all of the city of Louisville, Kentucky, of the second part, witnesseth that said party of the first part
155 in consideration of forty-six hundred dollars cash in hand paid by said second party, the receipt of which is hereby acknowledged, do hereby sell, grant and convey to the party of the second part, its successors and assigns, the following-described property, viz: A certain lot or parcel of land lying and being in the city of Louisville, Kentucky, and bounded as follows, to wit: beginning at a point in the south line of Duncan street, distant one hundred and fifty (150) feet west of the southwest corner of Duncan and Fourteenth streets, running thence westwardly and fronting the south line of Duncan street thirty (30) feet and extending back southwardly of equal width one hundred and ninety-five (195) feet to an alley, being the same property conveyed to said Bridget Giltenan or Scanlan by J. P. Hall and wife by deed dated April 25th, 1853, and of record in Deed Book 86, page 88, Jefferson county court clerk's office. To have and to hold the same with all the appurtenances thereon between the second party, its successors and assigns forever, with covenant of general warranty. In testimony whereof witness our signatures this 27th day of April, 1881.

her
BRIDGET + GILTENAN.
mark.
KATE GILTENAN.
PAT GILTENAN.
ANNIE GILTENAN.

Witness as to Bridget Giltenan—
S. S. MEDDIS.

I, Wm. E. Loran, clerk of the county court of Jefferson county, in the State of Kentucky, do certify that on this day the foregoing deed was produced to me in my office and acknowledged and delivered by Bridget Giltenan, Kate Giltenan, Pat Giltenan, and Annie, his wife, parties thereto, to be their act and deed.

Witness my hand this 26th day of April, 1881.

WM. E. LORAN, *Clerk*,
By JOHN C. LORAN, *D. C.*

I, Wm. E. Loran, clerk of the county court of Jefferson county, in the State of Kentucky, do certify that on this day the foregoing deed was again produced to me in my office and that I have recorded it and the foregoing certificate in my said office.

Witness my hand this 23rd day of May, 1881.

WM. E. LORAN, *Cl'k.*

STATE OF KENTUCKY, *County of Jefferson,* } *sct:*

I, Geo. H. Webb, clerk of the county court within and for
156 the county and State aforesaid, do certify that the foregoing 4 pages contain a true, correct and complete copy of deed between Bridget Giltenan and the Louisville, & New Albany & Chicago Railway Company, together with the certificate of acknowledgement and record thereto attached, as the same is now of record in my office as clerk aforesaid.

Said deed is recorded in Deed Book No. 241, page 89, county clerk's office aforesaid.

In witness whereof, and that the foregoing — truly and completely copied from the records of the court aforesaid, I, Geo. H. Webb, clerk of said court, hereunto set my hand and affix the official seal of Jefferson county, Kentucky, of which I am the custodian, at Louisville, Kentucky, this 19th day of April, 1890.

[SEAL.] GEO. H. WEBB,
Clerk Jefferson County Court, Ky.

Jefferson County Court.

LOUISVILLE, NEW ALBANY & CHICAGO RAILWAY CO., Plaintiff,
vs.
JOHN D. O'LEARY, Defendant.

The Louisville, New Albany & Chicago Railway Company, states that it is a corporation, and that it is duly empowered by its charter by an act of the General Assembly of the Commonwealth of Kentucky to purchase, lease, or condemn in said State such real estate as may be necessary for railway, switches, side tracks, depots, yards and other railway purposes, and to construct and operate a railroad in said State.

Plaintiff further states that John D. O'Leary aforesaid is the owner of a lot of land in the city of Louisville, in Jefferson county, State of Kentucky, described as follows, to wit:

Beginning at a point on the north side of Rowan street, 30 feet west of Fourteenth street, extending thence westwardly on Rowan street 30 feet, and extending back northwardly of same width 109 feet parallel with Fourteenth street, being the same property conveyed to said O'Leary by deed recorded in the office of the clerk of this court in Deed Book No. 234, page 105.

157 Plaintiff further states that the aforesaid land is necessary for the railway use and purposes of said railway company for the construction of depots, tracks and railway yards and other railway purposes of said company, and that said company has en-

deavored to purchase the said property from the said O'Leary, and is unable to contract with him for the purchase thereof, and the said O'Leary refuses to negotiate with the said company, for the sale to it of said property, or any part thereof.

Wherefore, the said company prays this honorable court to appoint commissioners to assess the damages the said O'Leary may be entitled to receive as compensation for said property, and that the same may be condemned to the said purposes of said company, and that the title to said property may be vested in said company.

E. F. TRABUE,
Att'y for L., N. A. & C. R'y Co.

STATE OF KENTUCKY, }
Jefferson County. }

To the hon. judge of the Jefferson county court:

The undersigned commissioners appointed by said court to award to the owner or owners the value of the land sought to be condemned for the uses of said railway company, and fully described as follows, viz: Beginning at a point on the north side of Rowan street in the city of Louisville, thirty feet west of Fourteenth street, extending thence westwardly on Rowan street 30 feet and extending back northwardly of same width one hundred and nine feet parallel with 14th street, being the same property conveyed to said O'Leary by deed recorded in the office of the clerk of said court in Deed Book No. 234, page 105, and also to award the damages if any resulting to the adjacent lands of the owner or owners considering the purpose for which it is taken. After being sworn as shown by the jurat herewith returned, and after having viewed and made examination of the above-described land, do make report as follows:

First. They find that said land belongs in fee-simple to John D. O'Leary.

Second. They award to said John D. O'Leary twelve hundred and twenty-five (1,225) dollars as the value of said lot of land above described to be taken by said railway company.

Third. They find that said J. D. O'Leary has no land adjacent to the above-described lot of land.

158 Fourth. They find that said J. D. O'Leary is a resident of this State, is a male adult, and is of sound mind.

All of which is respectfully submitted February 28th, 1887.

W. A. MERRIWETHER.
JOHN McATEER.
E. D. FRYER.

We ask an allowance for service of $25 each.

STATE OF KENTUCKY, }
Jefferson County. }

County Court, Feb. 25, 1887.

LOUISVILLE, NEW ALBANY & CHICAGO RAILWAY COMPANY, Plaintiff,
vs.
JOHN D. O'LEARY, Defendant.

The plaintiff having filed in the office of the clerk of said court a description of certain real estate and interests therein claimed by defendants, which the plaintiff claims is needed for its use, and that the owner- thereof and plaintiff cannot contract for the purchase thereof, and the plaintiff having moved the court to appoint commissioners for the condemnation thereof, the court now orders that John McAteer, W. A. Merriwether and E. D. Fryer, impartial housekeepers of Jefferson county, be and they are hereby appointed commissioners to assess the damage to which said owners may be entitled to receive, who before acting shall be sworn faithfully and impartially to discharge their duties according to law. They shall then proceed to view the land proposed to be taken, and award to the owners thereof the value of the same which shall be stated separately and they shall also award the damages, if any, to said owners of adjacent land, considering the purposes for which it is to be taken, but shall deduct from the incidental damages the value, if any of the advantages and benefits that will accrue to such adjacent lands from the construction and prudent operation of the railroad proposed to be constructed and report thereof in writing and file the same in the office of the clerk of said county court, stating their award, and describing therein the land condemned, give name and interest of each owner and whether said owners are now residents of this State, infant or of unsound mind, or married women.

The land proposed to be taken is described as follows: Beginning at a point on the north side of Rowan street in the city of
159 Louisville, 30 feet west of 14th street, extending thence westwardly on Rowan street 30 feet, and extending back northwardly of same width 109 feet parallel with 14th street, being the same property conveyed to said O'Leary by deed recorded in the office of the clerk of this court in Deed Book No. 234, page 105.

STATE OF KENTUCKY, }
Jefferson County, } *sct:*

We, John McAteer, W. A. Merriwether, and E. D. Fryer each do severally swear that we will faithfully and impartially discharge our duties under the foregoing order according to law.

JOHN McATEER.
W. A. MERRIWETHER.
E. D. FRYER.

STATE OF KENTUCKY, } sct:
Jefferson County, }

Subscribed and sworn to before me by John McAteer, M. A. Merriwether and E. D. Fryer this 26th day of February, 1887.

CHAS. D. GOEPPER,
District Circuit Court, Jefferson Co. Ct., Ky.

STATE OF KENTUCKY, } sct:
Jefferson County, }

I, Geo. H. Webb, clerk of the county court within and for the county and State aforesaid, do certify that the foregoing pages, contain a true, correct and complete copy of court proceedings in the condemnation of lands belonging to J. D. O'Leary, to wit: the petition and report of commissioners, as the same is now of record in my office as clerk aforesaid. Said petition and report *is* on file in county clerk's office aforesaid.

In testimony whereof, and that the foregoing orders of court — truly and completely copied from the records aforesaid, I, Geo. H. Webb, clerk of said court, hereunto set my hand and affix the official seal of Jefferson county, Kentucky, of which I am the custodian, at Louisville, Kentucky, this 19th day of April, 1890.

[SEAL.]

GEO. H. WEBB,
Clerk Jefferson County Court, Kentucky.

160 STATE OF KENTUCKY, } sct:
Jefferson County, }

I, W. B. Hoke, sole, and presiding judge of the county court within and for the county and State aforesaid, do certify that Geo. H. Webb, whose genuine signature appears to the foregoing certificate, is now, and was at the time of signing the same, clerk of said court, duly elected and qualified, and that all of his official acts as such are entitled to full faith and credit, and that his foregoing attestation is in due form of law.

Given under my hand at Louisville, Kentucky, this 19th day of April, 1890.

W. B. HOKE,
Sole and Presiding Judge of the County Court, Ky.

STATE OF KENTUCKY, } sct:
Jefferson County, }

I, Geo. H. Webb, clerk of the county court, within and for the county and State aforesaid, do certify that W. B. Hoke, whose genuine signature appears to the foregoing certificate, is now, and was at the time of signing the same, sole and presiding judge of said court, duly elected, commissioned and qualified, and that all of his official acts *of* such are entitled to full faith and credit.

In witness whereof, I hereunto set my hand and affix the official

seal of Jefferson county, Kentucky, of which I am the custodian, at Louisville, Kentucky, this 19th day of April, 1890.

[SEAL.] GEO. H. WEBB,
Clerk Jefferson County Court.

(Pages 471 to 513 inclusive stipulated out.)

The deposition of H. V. LOVING, taken on the 27th day of October, 1893, on behalf of Louisville Trust Co., is as follows:

By Mr. BOYLE, attorney for Louisville Trust Company:

1. State your name, residence, and occupation.

A. My name is H. V. Loving; residence, Louisville, Kentucky; occupation, president of the Louisville Trust Company.

2. Have you read the answer filed for the Louisville Trust Company in this case?

A. I have.

3. When did you read it last?

161 A. I read it last on yesterday.

4. Are the statements contained in that answer true?

A. They are true.

5. Does that answer correctly state the time, when, and the manner in which the Louisville Trust Company became the holder of the $125,000 of bonds of the Richmond, Nicholasville, Irvine & Beattyville Railroad Company numbered from 1051 to 1175 inclusive?

A. It does.

6. Are the dates given correct, and are you in any way able to verify them?

A. The dates are correctly given, and were verified by me again on yesterday by a personal examination and comparison with the bonds of the company.

7. At the time you made the agreement mentioned in that answer, whereby you surrendered 216 unendorsed bonds and was to receive 125 endorsed bonds, and at the time you did receive the bonds, did you have any knowledge or information of any kind as to whether or not the directors of the Louisville, New Albany & Chicago Railway Company had ordered the guarantee to be endorsed at any meeting where there was less than a quorum?

A. None whatever.

Q. Did you have any knowledge or information about any action of the board of directors of the Louisville, New Albany & Chicago railway on the subject?

A. None.

9. Did you have any knowledge or information as to whether or not there had been any authority given by the stockholders of the Louisville, New Albany & Chicago Railway Company for the guarantee?

A. I had no information whatever on that subject.

10. Have you read the original bill of complaint in this case?

A. I have.

11. Did you at the time you made the arrangement for the delivery of the bonds mentioned above, or at the time that you received the endorsed bonds, have any knowledge or information about the negotiations between Mr. Richards, the president of the Ohio Valley Improvement & Contract Company, and the officers of the Louisville, New Albany & Chicago Railway Company, set out in the bill of complaint?

A. At the time that the Louisville Trust Company surrendered the 216 bonds referred to, I had been informed that there had been an agreement entered into by which the Louisville, New
162 Albany & Chicago Railway Company had covenanted to guarantee the bonds of the R. N. I. & B. R. R. Company. I knew nothing whatever about any negotiations referred to between the Ohio Valley Improvement and Contract Company, and the directors of the Louisville, New Albany & Chicago Railway Company, by which they were to take certain of these bonds.

Cross-examination by Mr. HELM:

12. When did you actually receive the 125 guaranteed bonds?

A. The 125 bonds must have been received by the Louisville Trust Co., about the 17th of March, 1890.

13. You evidently speak now from inference, from the language of your answer. Give the facts upon which you draw the inference?

A. Upon the back of the note executed by the Ohio Valley Contract and Improvement Co., of date January 16th, 1890, for $100,000 at six months after date thereof, there is an entry on the back of said note as follows:

"The bonds mentioned within were withdrawn by the Ohio Valley Improvement and Contract Co., and in lieu thereof said company has deposited as collateral on this note, 125 bonds, first mortgage, of the Richmond, Nicholasville, Irvine & Beattyville Railroad Co., numbers 1051 to 1175 inclusive, $1,000 each, principal and interest guaranteed by the Louisville, New Albany and Chicago Railway Co. This March 17th, 1890. Signed, Ohio Valley Improvement and Contract Co., by Wm Cornwall, Jr., treasurer."

14. There was a complete change of directory on the 11th of March preceding the taking of those guaranteed bonds, was their not?

A. I don't know.

15. Don't you know that Messrs. Dowd, Carson and party were displaced at a meeting of the stockholders on the 11th of March, and that the party with Dr. Breyfogle at the head was put into the directory on the 11th or 12th of March?

A. I know the directory was displaced, but I don't know when it occurred.

16. It is likely at that time, it being only a few days from the date of this displacement, that you knew all about it?

A. I knew about it as soon as it occurred.

17. There was very considerable publication in the papers at that time, was there not, especially in the Courier-Journal?

A. There was.

163 18. Of charges of fraud against the old board, and a general shaking up was promised?

A. I have no recollection about charges of fraud at that time. It was published pretty extensively that there had been an ousting of the old board and the election of the new one.

19. Did the bonds which you received bear evidence of the fact that they were endorsed immediately before the displacement of Dowd as president?

A. There was nothing in the nature of the indorsement indicating when it was done.

20. Do you mean that the indorsement was not dated?

A. In the fact of the indorsement itself. I don't recollect the date of the indorsement, but there was nothing indicating when it was put on, unless a date shows it.

21. Do you recollect whether the indorsement does show the date?

A. I don't recollect now, but I can go and get one of the bonds. I don't recollect about the date. I have now made an examination, and the indorsement bears no date of guaranty.

22. You did know, however, didn't you, that they were guaranteed just a few days before you took the bonds?

A. Well, I didn't know when the guaranty was put on there at all. I only knew they were guaranteed when they came into our possession.

23. When did you surrender the 216 bonds?

A. About November 20th, 1889.

24. What did you hold as collateral for your loan between that and the 17th of March, 1890?

A. We held unendorsed bonds—that is, bonds not guaranteed, I mean.

25. I understand you to say that you surrendered the unguaranteed bonds on the 20th of November?

A. Other bonds unguaranteed were put in their place.

26. How long did you hold those?

A. We held those until the 17th of March, 1890, when the guaranteed bonds were received by us.

27. Before taking those bonds, with the guaranty of the company, did you have investigation made into the power of the Louisville, New Albany and Chicago railway to guarantee the bonds?

A. I did not.

28. Didn't it occur to you that a foreign corporation might not have the power to guarantee a resident or domestic corporation's bonds?

A. I knew the Louisville, New Albany and Chicago Rail-

164 way Co. had been incorporated under an act of the Kentucky legislature, but so far as its rights and powers to make this guaranty were concerned, it really did not occur to me.

29. When you say that you knew it was incorporated under an act of the Kentucky legislature, you mean that is your construction of the act?

A. I know an act had been passed purporting to incorporate the Louisville, New Albany and Chicago Railway Co. under the laws of Kentucky.

30. But you didn't look into the question of power?

A. I didn't look into that question at all.

31. Your first loan was secured by 216 bonds?

A. Unguaranteed.

32. Was there anything received in addition to the 125 guaranteed bonds when you took those?

A. Not on that note.

33. Were there 216 pledged to secure that particular note, and no other?

A. The 216 bonds were pledged to secure the note for $100,000, and no other. After the 125 guaranteed bonds had been received by us, we permitted the improvement Co., to retain the remainder of the bonds between the 125,000 and 216,000.

34. Did you make that agreement before the reception of those bonds or afterwards?

A. It is probable that it was made before.

35. Why do you think so?

A. I think it quite likely that it was made before, simply because we did retain only that number of bonds, and therefore, I infer the agreement must have been prior to that time.

36. Who made that agreement?

A. It must have been myself.

37. Don't you know whether you made it before or afterwards?

A. I really don't recollect. I have no doubt that it was made before.

38. How many times was this note for $100,000 renewed, after you received the 125 bonds?

A. It was renewed on July 26th, 1890, and renewed December 5th, 1890, and March 23d, 1891. On March 23rd, 1891, it was increased to $125,000. The renewal bearing date March 17th, 1891, for $125,000, the collateral including the 125,000 endorsed bonds with other first-mortgage bonds R., N., I. & B. R. R., making a total of 400 bonds as collateral on it at that time.

39. What was the financial condition of the Ohio Valley Improvement and Contract Company at the time of the first renewal after March 17th, 1890?

165 A. Solvent.

40. What was its condition at the second renewal?

A. Solvent.

41. The third renewal?

A. Solvent.

42. In other words, you think that on each one of those occasions, if you had refused to renew, and asked for payment, that you could have gotten it?

A. I don't know that I could.

43. That is the result of their being solvent, is it not?

A. So far as I know, they were solvent. They had never been declared insolvent.

44. You believed them to be solvent?
A. I had no reason to doubt they were solvent.

Redirect examination by Mr. BOYLE:

45. At the time you surrendered the 216 bonds, did you have any agreement or understanding as to what bonds should be substituted for them, and how many?
A. We had an agreement that the bonds of the R. N. I. & B. R. R. Co., to the number of 125,000, guaranteed by the Louisville, New Albany & Chicago Railway Co., should be deposited in lieu of them, but no agreement as to the numbers that those bonds should bear.
46. You had that agreement at the time you surrendered the 216 bonds?
A. We did.

Recross-examination by Mr. HELM:

47. As I understand you, the 216 bonds were surrendered in November, and you received other bonds in their stead, other bonds unguaranteed.
A. That is true. They were bonds that were unguaranteed, and when we surrendered the 216, we held them merely temporarily until we received the guaranteed bonds.
48. That was the agreement was it?
A. Yes, sir.
49. Was it understood how long they were to be held? Was there any fixed date?
A. Only long enough to enable them to take them to New York, and secure the guarantee.
50. Did it occur to you as anything out of the way that they were five months in doing that?
A. It did not.
51. You understood, as I understand from your answer,
166 that you were simply giving up these bonds and receiving this temporary pledge just long enough for them to transport the bonds to New York, have them guaranteed and returned?
A. Yes, sir; that is the fact, and the delay that was occasioned never excited the least suspicion in my mind, in fact I had no reason to doubt the right of the Louisville, New Albany & Chicago Railway Co. to indorse the bonds, and in absolute good faith the bonds were procured from us to send forward for that purpose. The delay excited no suspicion. It is not unusual in our business to have matters delayed.
52. That long delay?
A. Frequently longer than that.
I desire to add in this connection that when I gave my former deposition on the 20th day of February, 1893, in case No. 6075, L. N. A. & Chicago Railway Company *vs.* Ohio Valley Improvement & Contract Company, I was under the impression that the Louisville Trust Company, received the first lot of guaranteed bonds on

January 16th, 1890. In this I was mistaken, the same having been received at a subsequent date, as herein stated, and as set out in the endorsement on the back of the note for $100,000, bearing date January 16th, 1890, which was a renewal of a note for like amount, bearing date September 13th, 1889, at four months, the collateral on which was the 216 bonds mentioned herein.

The deposition of THEODORE HARRIS, taken on the 4th day of November, 1893, is as follows:

THEODORE HARRIS, being duly sworn and examined by
167 Mr. Miller as attorney for the defendant, deposed as follows:

1. You are one of the defendants in this case?

A. Yes, sir.

2. The Louisville Banking Co., is also a defendant I believe?

A. Yes, sir.

3. You filed your answer in this case some time ago, and also the answer of the Louisville Banking Co., setting up the numbers of the bonds owned by each one of you. I will ask you if those answers correctly state those facts.

A. I believe they do. I don't remember the facts now, but I know when the answer was made the matters were looked into carefully, and I believe the answers were true.

4. That answer shows that you own now twenty of these guaranteed bonds. I will ask you from whom you bought those bonds.

A. I bought them from the Ohio Valley Improvement and Contract Co.

5. Through whom?

A. Judge Richards.

6. Do you remember the time when you bought them?

A. I do not.

7. Was it before or after you were made a party to this suit?

A. Long before. I bought them very soon after the guarantee was placed upon them.

8. You mean the guarantee of the Louisville, New Albany & Chicago railroad?

A. Yes, sir.

9. Was that guarantee upon them at the time you bought them?

A. It was.

10. Upon all of them?

A. Upon all of them.

11. Do you know whether the Louisville, New Albany & Chicago Railroad Co., is a corporation created under the laws of the State of Kentucky?

A. My understanding is that it is chartered by the State of Kentucky.

12. Did you understand that at the time you bought these bonds?

A. I have known that for some time, and I think the charter has been amended perhaps once or twice.

13. Did you know that at the time you bought these bonds?

A. Yes, sir.

14. Do they operate a railroad in Kentucky?

168 A. They do, and at the time they were operating the Louisville Southern railroad at Burgin, and also to Lexington.

15. The complainant in this case alleges and charges certain fraudulent matters between the officers of the New Albany road and the officers of the Ohio Valley Improvement & Contract Co. I will ask you whether you knew anything about any such charges of fraud?

A. I did not.

16. When did you first hear of it?

A. I never heard of it at all. I don't know that I ever heard of it until just now when you mentioned them.

17. Until it was alleged in this case?

A. If I heard of it at any time, I do not remember it, and I do not believe that it is true.

18. Did you know anything about the action of the officers of the Louisville, New Albany & Chicago Railway Co., at the time they put the guarantee upon the bonds you bought?

A. In what respect?

19. About what they did, and how they made this guarantee, and when they made it?

A. No, sir; I didn't know anything about it.

20. Did you have any knowledge or information as to whether there was or was not a quorum of the board of directors present at the time that it was done?

A. I did not.

21. Did you know that it was done either by the board of directors or the stockholders?

A. I didn't know anything about that. I never inquired about the Louisville, New Albany & Chicago bonds that I bought, as to whether they were authorized by the board of directors or the stockholders.

22. Did you know which of them authorized this endorsement?

A. I did not.

23. Did you know anything at the time you bought these bonds about the negotiations that had been pending, or were claimed to have been pending between the plaintiff and the Ohio Valley Company as to the sale and the delivery of these bonds set out in the petition?

A. Well, I knew from hearsay that the New Albany Railway Co. was going to lease, or had leased the Beattyville road, and for a certain consideration in stock of the road, which I think was a majority of the stock, they were to guarantee and did guarantee the bonds.

24. Those were the bonds you bought, some of them?

A. Yes, sir; some of them I bought.

169 25. Were you present at any meeting of the board of directors of the Ohio Valley Company when any of these negotiations were discussed?

A. I think not. I know that I was not.

26. From whom did you get your information?

A. From Judge Richards.

27. He was the person who sold you the bonds?

A. Yes, sir.

28. It is alleged in the petition that at the meeting of the board of directors of the plaintiff held October 8th, 1889, there was not a lawful quorum of directors present. Did you at the time you bought these bonds know anything about that fact?

A. I did not, and do not now.

29. Did you ever personally hold any more than twenty bonds?

A. Not more than that many guaranteed bonds.

30. At the time you bought these bonds for yourself, and at the time you bought the bonds now held by the Louisville Banking Co., did you have any notice of any kind of any defect, or irregularity or fraud in connection with the execution of this endorsement upon them by the plaintiff?

A. I had not.

31. What did you pay for your bonds?

A. I paid ninety cents.

32. That is, $18,000 for the twenty bonds?

A. Yes, sir.

33. The Louisville Banking Company answers that it held ten of those guaranteed bonds. How did the banking company get possession of these bonds?

A. The banking company got possession by selling them under a lien and becoming the purchaser.

34. They were pledged to the bank for a loan?

A. They were.

35. Was the loan made at the time of the pledge, or at some other time?

A. The loan was made at the time of the pledge.

36. You afterwards enforced your lien and bought the bonds?

A. Yes, sir.

37. It is also alleged in the answer, that the bank holds forty-eight other bonds in pledge. Does the bank still hold those bonds as collateral?

A. No, they are all sold.

38. Your lien on them has been enforced?

A. Yes, sir.

39. The bank is now the owner of them?

170 A. I am asked about forty-eight bonds. I know nothing of any particular forty-eight. Speaking from memory, I believe that the Louisville Banking Company holds ten guaranteed bonds and a great many more that are not guaranteed, and more than forty-eight. I am told that I have made some answer different from this. I do not believe that I did, and if gentlemen have typewritten copies of what purports to be my answer, I do not acknowledge them. I remember that when I was called to give my deposition by Mr. Crawford, I did not know why I was called, until I got into the room. Then Mr. Crawford asked me various

questions, and I answered them as best I could off-hand. He then demanded at the close of the deposition that I should furnish to Mr. Graham, the stenographer, the list of the bonds we held. I did so, and I believe that list is true. Where it is, I do not know.

40. I asked you about your answer you filed to the case for the bank, and in your reply to my question, you seem to refer to your answer in your deposition. Do I understand you to say that the answer filed for the banking company correctly or incorrectly states the number of bonds held by the bank at that time?

A. I presume it correctly states it unless there has been some error in the typewriting or copying.

41. In order to correct any mistake, if it exists, I will ask you to examine the guaranteed bonds held by the bank, and furnish the numbers to the stenographer, and let him incorporate them as your answer to this question?

A. I will do so.

42. Who acted for the bank?

A. I think I did myself, mostly so anyhow.

43. Did you or the banking company have any knowledge or notice of the former deposition of Mr. Loving, and Mr. Wetterer, Cassilly, and the other witnesses that were taken in this case besides yourself?

A. No, sir; I do not know that those gentlemen have ever given depositions in the case.

44. They took yours?

A. They took mine.

Cross-examination by Mr. HELM:

45. Have you any means by which you can fix the date upon which you acquired these several bonds that you have mentioned in this deposition, for either the bank or yourself?

A. Oh, yes, sir; I can give the dates the bank got them. That is to say, our bank made two or three loans to the improve-
171 ment company, and received in each case bonds as collateral. I could not tell which particular bond or bonds were received with each loan, but I can give the dates of the original loans.

46. And each note either on its face or back shows the number of guaranteed bonds received, does it?

A. No; we never take the numbers of bonds in our pledges. I forbid it.

47. It shows the number of bonds received, and whether they were guaranteed?

A. No, sir; it shows the number of bonds, but we have not got the original notes. They were surrendered long ago, and the notes were renewed. We can only give the dates upon which the loans came in.

48. How would you be able to know then whether they were guaranteed or unguaranteed if you have both?

A. I would not.

49. You would not know whether they were guaranteed or unguaranteed?

A. No, but the loans were all made at some time, long before any controversy arose about them, or at least before I knew of any.

50. Can you tell me whether the loans made by the bank upon which you received those guaranteed bonds were made before or after your individual purchase in January, 1890?

A. Well, I think one or two of them (there were but two large loans), were made about the time, or not far from the time when I bought my twenty bonds, it may have been a little before, or a little after. I think that was a large loan. Then there was another large loan made some time after that, made in the summer of 1890.

51. Upon that large loan, did you receive any of these bonds as collateral?

A. I have already stated that I did not know whether we received the guaranteed bonds on the large loan.

52. The one of the large loans was made about January, 1890, and the other in the summer of 1890?

A. One was made in the summer of 1890, that I am positive of, and the other was made before that time, I don't know just when, but I think about—not far from the time I bought my bonds, which seemed to be January, 1890.

53. You are not able to state upon which of those loans the guaranteed bonds were placed?

A. I am not.

54. Were you present at the meeting of stockholders in New York on March 12th, and on succeeding days in 1890?

A. You mean the stockholders of the Louisville, New Albany & Chicago railway?

172 55. Yes.

A. I was.

56. You participated in the debate on that occasion?

A. Not in their debate.

57. You spoke before the stockholders, I believe?

A. I did.

58. You were then personally cognizant of the position then taken by the New Albany road, or the stockholders of the road?

A. I knew that the road had been overturned—that their management had been overturned, and I wanted to know what they were going to do about the Louisville Southern, of which I was then president. From rumors heard by me, I was afraid that they were going to do some harm to it.

59. You do know however, do you not, that at this stockholders' meeting there was a report showing that this endorsement had been made upon the authority of the board, and that the stockholders by a very large vote repudiated the action of the board?

A. No, I did not know that. If I did know it, I have forgotten it. I was only in the meeting of the stockholders a short time, and that by courtesy, and was there only for the purpose of ascertaining what their intention was with respect to the Louisville Southern railroad. I was invited to speak, and did speak, and as soon as I was through I withdrew, feeling that politeness required it.

60. Was it not a matter of very common report in this city about

that time that the stockholders' meeting did repudiate the action of the board placing the guarantee of the New Albany Company upon these bonds?

A. Well, I cannot say that I have any knowledge of that. I think I remember to have heard so, I don't remember how.

61. Have you not since this deposition was begun had an investigation made with the view of determining whether the banks owns or ever owned the bonds 242 to 243, 138 to 143 inclusive, 117 to 115 inclusive, 238 to 239 inclusive, 258 to 260 inclusive, 240 to 241 inclusive, 225 to 227 inclusive, 203 to 212 inclusive, 155 to 159 inclusive, 118 to 122 inclusive, 29 to 30 inclusive, and 200 to 202 inclusive, alleged in your answer filed in this case to be held by the bank as collateral?

A. As collateral? Now I begin to understand you. I thought you were inquiring about the bonds that we obtained of the Ohio Valley Improvement Co. I do not know what bonds we hold as collateral for other loans made to other people. We may
173 have all these bonds that you speak of. We only have ten bonds that we acquired from the Ohio Valley Improvement Company.

62. You stated as I understood you in a former part of this deposition that these bonds held as collateral had been sold and purchased by the bank, and the bank was now the owner of them?

A. That is true. I had reference to the ten bonds that the bank owns that had been pledged to it by the Ohio Valley Improvement Co., and to no others. The bank very likely holds other bonds belonging to other people as collateral.

63. Will you please obtain and file a statement showing when you received the bonds, the numbers of which have just been given as collateral?

A. You mean the bonds named in your last question?

64. Within the last question or two.

A. I will endeavor to do so.

Redirect examination by Mr. MILLER:

65. As I understand you, the bonds referred to and given in Mr. Helm's question may be held by the bank, pledged to it by persons other than the Ohio Valley Improvement Company?

A. I think very likely.

66. When you gave your answers heretofore, you understood that he asked about bonds that you got from the Ohio Valley Company?

A. That is what I understood.

67. You say you bought your individual bonds about the 2nd day of January, 1890, and that you bought the bonds or received the bonds held by the Louisville Banking Company upon two large loans, one made about January 2nd, 1890, and the other somewhere in the summer of 1890. Have you any way of arriving at the number of those guaranteed bonds that were pledged to you on each one of these loans?

A. No.

68. Do you know what time in the summer of 1890 that second loan was made, as near as you can give it?

A. I think in June.

69. All of these guaranteed bonds from the Ohio Valley Company were received by the bank then upon these two loans?

A. They were, upon one or the other, or both.

70. You have spoken of your presence at a meeting of the stockholders of the New Albany road, and that you spoke before that meeting. Were your remarks and business with the meeting confined to the matters of the Louisville Southern railroad?

174 A. Entirely.

71. Did you have anything to do with, or hear anything said upon that occasion with regard to these bonds, or the action of the board upon these guaranteed bonds, if any was taken?

A. I don't remember to have heard anything.

72. You retired shortly after your business with Louisville Southern matters closed?

A. I had no right in that meeting. I was not a stockholder. I went there to see Dr. Breyfogle, to ask him what he was going to do with the Louisville Southern railroad. He asked me to take a seat, and I did so in the ante-room. Bye and bye, perhaps half an hour, after a while, the meeting was in progress, and he came to me and invited me to come into the meeting, and said he was just about to make a report upon the Louisville Southern railroad, and I was welcome to hear it and make any reply that I chose. I thanked him for the courtesy extended to me, I went in, heard his report, and I made my reply and then retired.

73. Was that your whole connection with the whole matter?

A. That is all.

74. What connection did you have with the Louisville Southern?

A. I was president of it.

75. You had in contemplation the leasing of the Louisville Southern by the New Albany railroad?

A. It was already under lease.

76. And its affairs were before the meeting?

A. I did not know what business they had met for, or what business they had transacted before I went into the room, or what business they transacted after I left the room, but when the business of the Louisville Southern was reached, Dr. Breyfogle came to me and invited me in.

77. In the early part of this deposition you have stated that all the bonds held by the bank as collateral security had been sold, and the bank now owns them. You referred to the ten bonds, or to the forty-eight bonds, or all of the bonds?

A. In that answer, I referred only to the bonds which had been pledged to the bank by the Ohio Valley Improvement & Contract Company.

78. You had no reference to these other forty-eight bonds referred to?

A. I don't know anything about any particular number of forty-

eight. I had no reference to any bonds except the ten bonds
175 that came from the Ohio Valley Improvement Co. I do know that there are other bonds held by the Louisville Banking Company in pledge for money loaned to other people, but thought your question referred only to the Ohio Valley Improvement Company bonds.

79. Did you furnish this list of forty-eight bonds, the numbers of which are copied in your answer, at the time the answer was prepared?

A. I do not now remember. I suppose that I did.

80. You will verify that statement and see whether it is true or not?

A. I will.

Recross-examination by Mr. HELM:

81. Will you on the statement which you have promised to file showing the numbers of the bonds and the date of their reception, also show the names of the parties whose debts are secured by the pledge of these bonds?

A. I had rather not do that unless compelled to. I will give my reason, I have no right to disclose other people's business.

82. Referring back to your answer in which you say you heard Dr. Breyfogle's report on the Louisville Southern, can you say whether you heard the whole of his report or not?

A. No, I cannot say whether I heard the whole of it or not. I heard what I supposed to be the whole of it, though he may have made some report before, and may have made some report after I left.

83. He began the reading of his report after you got in, did he?

A. I thought he began the reading of the report about the Louisville Southern after I came in, but whether he had read any other report before that I don't know. The meeting had been in progress for some time.

84. When you came in, did he appear to take up his general report and begin at the beginning and read to conclusion or not?

A. I don't remember about that.

The deposition of JAMES G. FETTER is as follows:

JAMES G. FETTER being duly sworn and examined by Mr. Geo. M. Davie as attorney for the defendant, Kentucky National Bank, deposed as follows:

Q. 1. You were president of the Kentucky National Bank were you not?

A. Yes, sir.

Q. 2. During what year were you president of that bank?

176 A. From about 1885 to the summer of 1893.

Q. 3. Do you recollect the transaction mentioned in the answer of the Kentucky National bank herein, to wit, a note of W.

W. Jenkins dated January 9th, 1890, and a pledge of $5,000 of bonds of the R. N. I. & B. Railroad Co.?

A. Yes, sir.

Q. 4. State what was the nature of that transaction.

A. Mr. Jenkins came to the bank to borrow some money on those bonds and as we regarded the bonds as perfectly good at the time they were presented, we made the loan.

Q. 5. What was the nature of these bonds and who were the parties to them?

A. The bonds were executed by the R. N. I. & B. railroad and the interest and principal guaranteed by the Louisville, New Albany and Chicago Railway Co.

Q. 6. I will ask you whether the fact of that guaranty was or was not relied on in making that loan?

A. We regarded the bonds as very much better on account of the endorsement.

Q. 7. On account of the guaranty?

A. Yes; on account of the guaranty of the Louisville, New Albany & Chicago Railway Co.

Q. 8. Did that influence the bank in taking the bonds as collateral?

A. It did.

Q. 9. At the time the bank took those bonds as collateral, I will ask you whether the bank had any knowledge that there was any trouble about the guaranty or any trouble or notice that the guaranty was not authorized?

A. It did not.

Q. 10. What was the bank's knowledge upon that subject and what was its belief and information?

A. Its information and belief was that the guaranty was legitimate and proper.

Q. 11. Did the bank advance this money $4,300 to Jenkins, lend it to him on this collateral?

A. Yes, sir.

Q. 12. Are you familiar with the transaction, the loan to W. G. Osborne & Co., of $7,200 on January 11th, 1890, and the pledge of $8,000 of those bonds?

A. I am.

Q. 13. Please describe that transaction, what its nature was, and what was relied on by the bank in making that loan.

A. A similar reliance to that previous transaction.

177 Q. 14. Was, or not, the bank aware of the fact of the guaranty of the Louisville, New Albany & Chicago Railway Co., on that $8,000 of bonds at the time they were taken as collateral to that loan?

A. It was.

Q. 15. Did or not the bank rely on that guaranty in making that loan?

A. It did.

Q. 16. Was the money advanced by the bank and loaned thereon?

A. It was.

Q. 17. Do you know of the transaction the loan by the bank to William Cornwall of the sum of $3,500 on May 3rd, 1890, with $5,000 of the bonds of the R. N. I. & B. Railroad Co., as collaterals?

A. I do.

Q. 18. I will ask you what was the nature of that loan and whether the guaranty of the Louisville, New Albany and Chicago Railway Co., was relied on by the bank in making that loan?

A. The loan was made in a legitimate way relying upon the collateral and the guaranty of the Louisville, New Albany & Chicago Railway Co.

Q. 19. Was the bank influenced in making this loan and the loan to W. G. Osborne & Co., by the fact that the guaranty of the Louisville, New Albany and Chicago Railway Co., was upon the bonds?

A. It was.

Q. 20. I will ask you whether at the time the bank loaned the money to W. G. Osborne & Co., and at the time it loaned it to William Cornwall above referred to, it had any knowledge or notice that the mortgage was not authorized?

A. It had not.

Q. 21. Was the authority of the Louisville, New Albany and Chicago Railway Co., to make this guaranty questioned in any way?

A. Had the question been made of its authority at the time these loans were made? No, sir.

Q. 22. Did the bank have any other security for these loans except these bonds guaranteed by the Louisville, New Albany and Chicago Railway Co.?

A. I think not. We loaned the money simply on those bonds.

Q. 23. I will ask you whether or not W. W. Jenkins, W. G. Osborne & Co., and William Cornwall are solvent or insolvent and whether this debt can be made out of them?

178 A. I regard them as insolvent.

Q. 24. How much are the bonds of the R. N. I. & B. Railroad Co., and how much can be made out of these bonds without the guaranty of the Louisville, New Albany & Chicago Railway Co., if that guaranty is stricken out?

A. Very little, not over fifteen per cent.

Q. 25. You have stated that the bonds of the Richmond, Nicholasville, Irvine & Beattyville Railroad Co., are worth about fifteen cents on the dollar without this guaranty?

A. Yes, sir.

Q. 26. How much will retaining the guaranty upon the bonds make them worth?

A. I would regard them as worth par.

Q. 27. About par?

A. Yes, sir.

Q. 28. Did or not the bank at the time it took those bonds as collateral have any knowledge that there had been any fraudulent agreement of the officers of the Monon Co., with the Ohio Valley

Improvement and Contract Co., or that the guaranty had not been authorized by any meeting of the directors at which there was present a quorum?

A. It did not.

Q. 29. Did or not the bank at the time it took those bonds as collateral and advance the money have any knowledge that the guaranty on the bonds had not been authorized and approved upon petition or by a vote of a majority of the stockholders of the Louisville, New Albany & Chicago Railway Co.?

A. It had not.

Q. 30. Would the bank have loaned the money on said collateral if it had had any knowledge or notice of any defect in the guaranty of those bonds?

A. It would not.

Cross-examined by Mr. HELM:

Q. 31. What officer of the bank represented the bank in lending that money to Mr. Jenkins?

A. The president.

Q. 32. Yourself?

A. Yes, sir.

Q. 33. What officer of the bank represented the bank in lending the money to Osborne & Co.?

A. The president.

Q. 34. Yourself?

A. Yes, sir.

Q. 35. Did you also lend the money to Cornwall for the bank?

179 A. Yes, sir.

Q. 36. You were a director, I believe, in the Louisville, New Albany & Chicago Railway Co. during the whole of the year in which this guaranty was placed upon the bonds of the R. N. I. & B. Co.?

A. I think I was.

Q. 37. You know perfectly well, do you not, that there was no petition presented to the directors signed by a majority of the stockholders requesting that endorsement?

A. I think not.

Q. 38. You think there was no such petition?

A. No, sir; not that I remember of.

Q. 39. Don't you know there was not in fact any such petition with reference to the money loaned to Cornwall on May 3rd, 1890, that at the time that money was loaned the guaranty had not been questioned and that the bank had no intimation that there was any infirmity or irregularity in the endorsement? Are you not mistaken in that?

A. I had reference to the loan when it was originally made. We had no knowledge of any question of the guarantee at that time.

Q. 41. His question related to May 3rd, 1890?

A. My answer had reference to the original loan.

Q. 42. On May 3rd, 1890, you did know that the matter was questioned?

A. I cannot say that I did.

Q. 43. Don't you know that about a month before that the Louisville, New Albany & Chicago Railway Co. had filed its bill in the circuit court of the United States challenging the validity of that guaranty and that Judge Jackson had granted an injunction against all persons before the court restraining them from parting with the possession in any way of the bonds then in their possession?

A. I remember that there was some such agitation, but I don't remember the time.

Q. 44. You cannot now fix the time?

A. No, sir.

Q. 45. But don't you know to be reasonably sure that at the time that this suit was filed and when there were so many publications about it, you knew of it?

A. Yes, sir.

Q. 46. So that if the suit was filed and this proceeding taken about the 9th or 10th of April, 1890, you must have known on the 3rd of May, 1890, that the validity of the guaranty was questioned?

180 A. I would suppose so, but my point is to state that when the loan was originally made the bank or myself was not in knowledge that there was any question of the guaranty. The loan afterward was reduced and renewed, and owing to the financial condition of Cornwall we were unable to collect it, although it was reduced at each maturity and renewal.

Q. 47. You subscribed for $100,000 of those bonds yourself?

A. I did.

Q. 48. What became of them?

A. There was never but $25,000 of them delivered to me, and I disposed of them.

Q. 49. To whom?

A. I really could not say to whom I sold them all.

Q. 50. Tell us as far as you can remember.

A. My recollection is that I sold ten of them to Amos Stickney.

Q. 51. To Major Stickney, of the United States service?

A. Yes, sir; and ten of them to Osborne.

Q. 53. What became of the other five?

A. I don't remember who got them.

Q. 54. Don't you remember any of them?

A. No, sir.

Q. 55. Have you any of them now?

A. I have not.

Q. 56. Does any one hold any bonds for your use or in which you have any interest?

A. No, sir.

Q. 57. Have you any interest with W. G. Osborne & Co. with the bonds held by them?

A. I did have an interest with him but the bank holds them now.

Q. 58. The bank holds them as collateral?

A. I think they have taken them to account.

Q. 59. What do you mean by "taking them to account"? Have they been sold?

A. I don't know that they have been sold; they claim them as their collateral.

Q. 60. They do hold them as collateral, but I would like to know exactly what you mean by the bank "taking them to account." How has the bank acquired any title greater than that acquired when it received the bonds in pledge merely?

A. I presume the bank, aware of the financial condition of Osborne and myself, likely took the bonds to account, deeming that they could not recover from us.

181 Q. 61. Has the bank surrendered the note to Osborne & Co.?

A. It has not that I know of.

Q. 62. You were a banker for a number of years; what right has the bank to hold onto a note and by action of its own invest itself with the ownership of bonds pledged as collateral?

A. The right that we have agreed to surrender everything we had to them for our obligation.

Q. 63. You mean that you sold them the bonds?

A. We have agreed to turn over to them every collateral we had in their hands.

Q. 63½. They did hold them as collaterals; what further turning over did you do?

A. Gave them possession.

Q. 64. They had possession as pledged?

A. Gave them title.

Q. 65. What did you do to give them title?

A. Agreed to surremder them everything they had.

Q. 66. At what price?

A. No specified price was given.

Q. 67. They had those bonds already in pledge and now you have not sold the bonds to them for any sum. have you?

A. No, sir.

Q. 68. You have not received any credit on your note for the bonds, have you?

A. Not that I know of.

Q. 69. Don't it strike you as a somewhat curious transaction that the bank should not be the owner of bonds without crediting you with any part of the consideration therefor on your note or without surrendering your note to you in any way?

A. I presume the bank regards the collateral as the only security they hold and therefore are acting on that.

Q. 70. If that be true why have not they surrendered your notes to yon?

A. I do not know.

Q. 71. Have you or Osborne ever demanded the surrender of the notes or that any credit be placed on them?

A. We have not that I know of.

Q. 72. Were you interested in any way in the Jenkins bonds?
A. I was not.
Q. 73. Or in the Cornwall bonds?
A. I was not.
Q. 74. Have you any interest still left in the Stickney bonds?
182 A. I never had any interest in the Stickney bonds.
Q. 75. That was a direct sale?
A. Yes, sir.

Re-examined by Mr. DAVIE:

Q. 76. Please give me the history of each of the notes that have been inquired about?
A. The note of W. W. Jenkins was a demand note dated January 9th, 1890, for $4,300 on which was pledged $5,000 of R. N. I. & B. Railroad bonds guaranteed by the Louisville, New Albany & Chicago Railway Co. This pledge was made January 9th, 1890. The note of W. W. Osborne & Co. was a demand note dated January 11th, 1890, for $7,200 on which was pledged $8,000 of the R. N. I. & B. bonds with a guaranty of the Louisville, New Albany & Chicago Railway Co. on them. This pledge was made January 11th, 1890. The note of William Cornwall was made May 3rd, 1890, for $3,500 with a pledge of $5,000 of bonds of the R. N. I. & B. Railroad Co. guaranteed by the Louisville, New Albany & Chicago Railway Co. This note was renewed on September 6th, for $3,000 with the same collateral and again on February 11th, 1891, for $2,250 with the same collateral.
Q. 77. I will ask you whether or not the directors of the Kentucky National bank ratified these loans made by you as president to these parties?
A. They did.
Q. 78. At the time the bank made these loans did the bank directors know that this guarantee had not been petitioned for by a vote of the majority of the stockholders of the Louisville, New Albany & Chicago Railway Co.?
A. They did not.
Q. 79. Did the directors of the bank know at the time these bonds were taken as collateral that the guaranty had not been authorized at a meeting of the directors of the Louisville, New Albany & Chicago Railway Co. at which there was a quorum present?
A. The bank did not know it, in fact there was a quorum of the railroad directors present when it was done.

By Mr. HELM:

Q. 80. Please tell me exactly what affirmative action the directors of your bank took in approving of your course in lending the money in the various transactions which you have detailed in your examination-in-chief?
A. The board of directors of the Kentucky National bank meet Tuesday and at that meeting all loans made for the previous week were read and discussed and approved.

183 Q. 81. Is not this about the fact and is not this about all you want to say in that respect: That it is the custom of that bank at each meeting to read the paper discounted since the last meeting and if any one wishes to criticise or discuss any transaction or any of the paper exhibited they have a right to do so and sometimes do do so, but that where no objection is made the minutes show that the report was approved?

A. It does.

Q. 82. Those are about the facts?

A. Yes, sir.

Q. 83. You have no recollection, have you, of these particular pieces of paper having been actually discussed?

A. I have not.

A. 84. You stated in answer to a question of mine awhile ago that the Cornwall paper originated prior to May 3rd, 1890. I see from this letter from Mr. Bockee, the president, that the loan originated May 3rd, 1890. May you not be mistaken in saying it originated before that time?

A. I may be; I have not the book before me and it was so long ago that I cannot fix the dates.

Q. 85. If then Mr. Bockee, who is now the president of the bank, and has access to the books and who undertaking to give a history of those transactions, states as he appears to in this letter that this Cornwall transaction originated May 3rd, 1890, you would be inclined to believe that you must be mistaken in saying it originated before that?

A. I would think I would be.

By Mr. DAVIE:

Q. 86. I will ask you if the fact of a suit about this guaranty being brought in 1890 was brought before the board of the Kentucky National bank.

A. It was not.

Q. 87. Was the Kentucky National bank a party to any such proceedings in 1890?

A. It was not.

Q. 88. Did the board of the Kentucky National bank in taking this Cornwall paper and at the time it took it know about any question of this guaranty?

A. Not that I know of and I think not.

By Mr. HELM:

Q. 89. Did you not attend the stockholders' meetings March 12th and 22nd, 1890, of the Louisville, New Albany & Chicago Railway Co. in New York?

A. No, sir; I was not there. I did not attend any meetings of the Louisville, New Albany & Chicago Railway Co. since the guaranty of those bonds.

184 Q. 90. Mr. Theodore Harris and Judge Richards and that crowd did attend that meeting?

A. I think so.

Q. 91. And when they came back it was generally reported throughout the community that that endorsement had been repudiated by the L., N. A. & C.?

A. That was generally known.

Q. 92. And when this bill in equity in this very case was filed on April 9th, 1890, and the restraining order granted by Judge Jackson it was published under prominent head-lines in the Courier-Journal and other papers, was it not?

A. Yes, sir.

Q. 93. It was a matter of general discussion in this community?

A. Yes, sir.

United States Circuit Court, Sixth Circuit, District of Kentucky.

LOUISVILLE, NEW ALBANY & CHICAGO RAILROAD COMPANY, Complainant,
vs.
THE OHIO VALLEY IMPROVEMENT & CONTRACT COMPANY, &c., Defendants.

To the honorables the judges of the circuit court of the United States for the sixth circuit, district of Kentucky:

The defendant in the above-entitled case, Louisville Banking Company, represents that the court erred to its prejudice in the proceedings and final decree entered therein, which errors are set forth and designated in an assignment of errors, which is filed herewith and made part hereof.

Wherefore, the said defendant prays an appeal to the circuit court of appeals, with supersedeas, and that a proper citation be granted, requiring the complainant, The Louisville, New Albany and Chicago Railroad Company, to appear and show cause to said circuit court of appeals why the decree herein should not be reversed.

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BARNETT, MILLER & BARNETT,
Attorneys for Louisville Banking Co.

And on the same day, to wit: on the 11th day of Oct., 1894, came the Louisville Banking Company by counsel and filed its assignment of errors herein, which is as follows:

United States Circuit Court, Sixth Circuit, District of Kentucky.

LOUISVILLE, NEW ALBANY & CHICAGO RAILROAD COMPANY, Complainant,
vs.
THE OHIO VALLEY IMPROVEMENT AND CONTRACT COMPANY, &c., Defendants.

Louisville Banking Company's Assignment of Errors.

The defendant, The Louisville Banking Company, says that the court in the proceedings and decree rendered in the above-entitled suit, erred to its prejudice as follows:

1. The court erred in adjudging and decreeing that the guaranty

endorsed upon the bonds of the Richmond, Nicholasville, Irvine & Beattyville Railroad Company, by and in the name of the complainant, was so endorsed without authority.

2. The court erred in holding that the board of directors of complainant had no authority, under the evidence in this case, to make the guaranty of the bonds held by the Ohio Valley Improvement & Contract Company, as it did.

3. The court erred in adjudging and decreeing that the guaranty endorsed on the bonds of the Richmond, Nicholasville, Irvine & Beattyville Railroad Co. in the name of the complainant, is void.

4. The court erred in adjudging, decreeing and directing this defendant to produce the bonds owned by it into court, and in ordering the clerk of the court to cancel the guaranty on the same.

5. The court erred in enjoining and restraining this defendant from selling, alienating or parting with said bonds before said guaranty had been cancelled.

6. The court erred in adjudging and decreeing that com-
186 plainant, The Louisville, New Albany & Chicago Railroad Company, is not now, and was not when this suit was instituted, a corporation of the State of Kentucky, as well as a corporation of the State of Indiana, and in holding that it is and was at the time this suit was brought, a corporation of the State of Indiana only.

7. The court erred in holding that said guaranty endorsed in the name and under the seal of the corporation, upon bonds owned and held *bona fide* and for a valuable consideration, by this defendant, with no knowledge or information, upon the part of said owner and holder of said bonds of any irregularity, fraud, or illegality in the making of said guaranty, or any want of authority in the complainant's board of directors to execute the same, is nevertheless null and void.

8. The court erred in admitting, over this defendant's objection, the deposition of John A. Hilton, who testified in substance: That the endorsement of guaranty was placed upon the bonds by the authority of the board of directors of complainant and not by the authority of its stockholders, and that complainant repudiated said endorsement at a meeting of its stockholders held March 22, 1890, and after this defendant had bought its bonds for value and without notice of any alleged infirmity in the endorsement.

9. The court erred in adjudging that the complainant recover its costs against this defendant herein.

BARNETT, MILLER & BARNETT,
Att'ys for Louisville Banking Co.

187 United States Circuit Court for the District of Kentucky.

THE LOUISVILLE, NEW ALBANY & CHICAGO RAILWAY COMPANY *vs.* THE OHIO VALLEY IMPROVEMENT & CONTRACT COMPANY, &C.	The Petition of the Defendant The Louisville Trust Company for an Appeal.

The defendant, The Louisville Trust Company, represents that the court has erred in the proceedings and in the final decree in the above-entitled cause and which errors have been designated and set forth in an assignment of errors which is filed herewith as part hereof.

Wherefore, the defendant prays an appeal to the circuit court of appeals and that a proper citation be granted requiring the Louisville, New Albany and Chicago Railway Company to appear and show cause to the said circuit court of appeals why the decree herein should not be reversed.

ST. JOHN BOYLE, *Attorney.*

The assignment of errors above referred to is as follows, to wit:

United States Circuit Court for the District of Kentucky.

THE LOUISVILLE, NEW ALBANY & CHICAGO RAILROAD COMPANY *vs.* THE OHIO VALLEY IMPROVEMENT & CONTRACT COMPANY.	Assignment of Errors by the Louisville Trust Company.

The Louisville Trust Company complains of errors in the proceedings in the United States court for the district of Kentucky in the suit in equity of The Louisville, New Albany and Chicago Railway Company against The Ohio Valley Improvement and Contract Company and others and assigns the following errors:

1st. The court erred in its decision that the complainant was not a citizen of Kentucky and in maintaining jurisdiction of the said cause.

2nd. The court erred in overruling the demurrer of the defendant to the original and supplemental bills of complaint and in its decision that the case was one of which a court of equity had jurisdiction.

3rd. The court erred in deciding that the complainant had no legal authority to endorse the guaranty on the bonds of the Richmond, Nicholasville, Irvine and Beattyville Railroad Company.

4th. The court erred in deciding that the complainants were entitled as against the said defendant to have its guaranty endorsed on such bonds cancelled.

5th. The court erred in deciding that the complainant was not a corporation of the State of Kentucky and was not authorized to make such guarantee.

ST. JOHN BOYLE, *Attorney.*

188 On the 30th day of November, 1894, came the Louisville Banking Company by its attorney and on its motion it is ordered that an appeal be granted it herein.

Came again the Louisville Banking Company and filed its appeal bond in the penalty of one thousand dollars ($1,000.00) conditioned according to law, with Theodore Harris as surety, which bond is now approved.

The bond above referred to is as follows:

Circuit Court of the United States, District of Kentucky.

LOUISVILLE, NEW ALBANY AND CHICAGO RAILWAY CO.
vs.
OHIO VALLEY IMPROVEMENT AND CONTRACT CO. *et al.*

Know all men by these presents that we, the Louisville Banking Company, principal, and Theodore Harris, are held and firmly bound unto the Louisville, New Albany and Chicago Railway Co., in the sum of one thousand dollars, to be paid to the said Louisville, New Albany and Chicago Railway Company, executors and administrators. To which payment well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our, heirs, executors, and administrators, firmly by these presents.

Sealed with our seals, and dated this 13th day of October, A. D. 1894.

Whereas, the above-named Louisville Banking Company hath prosecuted an appeal to the United States circuit court of appeals for the sixth circuit to reverse the decree rendered in the above-entitled suit, by the circuit court of the United States for the district of Kentucky, at Louisville.

Now, therefore, the condition of this obligation is such, that if the above-named Louisville Banking Company shall prosecute its said appeal to effect, and answer all damages and costs, if it shall fail to make good its plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

[L. S.] LOUISVILLE BANKING CO.,
[L. S.] By THEODORE HARRIS, *P't.*
[L. S.] THEODORE HARRIS.

Sealed and delivered in the presence of—
HENRY F. CASSIN,
Deputy Clerk U. S. Courts.

Approved:
JNO. W. BARR.

189 On the 30th day of November, 1894, came the Louisville Trust Company by its attorney, and on its motion it is ordered that an appeal be allowed it herein.

Came again the Louisville Trust Company and filed its appeal bond herein in the penalty of twelve thousand five hundred dollars

(12,500.00) conditioned according to law, with St. John Boyle as surety, which bond is now approved.

The bond above referred to is as follows:

Circuit Court of the United States, District of Kentucky.

LOUISVILLE, NEW ALBANY & CHICAGO RAILWAY CO.
vs.
OHIO VALLEY IMPROVEMENT AND CONTRACT CO. *et al.*

Know all men by these presents that we, The Louisville Trust Company, principal, and St. John Boyle, are held and firmly bound unto The Louisville, New Albany and Chicago Railway Company in the sum of twelve thousand five hundred dollars, to be paid to the said Louisville, New Albany and Chicago Railway Company, executors and administrators. To which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our, and each of our, heirs, executors and administrators, firmly by these presents.

Sealed with our seals, and dated this 22nd day of October, A. D. 1894.

Whereas, the above-named Louisville Trust Company hath prosecuted an appeal to the United States circuit court of appeals for the sixth circuit to reverse the decree rendered in the above-entitled suit, by the circuit court of the United States for the district of Kentucky, at Louisville:

Now, therefore, the condition of this obligation is such, that if the above-named Louisville Trust Company shall prosecute its said appeal to effect, and answer all damages and costs, if it shall fail to make good its plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

[L. S.] LOUISVILLE TRUST CO.,
[L. S.] By ST. JOHN BOYLE, *Att'y.*
[L. S.] ST. JOHN BOYLE.

Sealed and delivered in presence of—
HENRY F. CASSIN,
Deputy Clerk U. S. Courts.

Approved:
JNO. W. BARR.

190 UNITED STATES OF AMERICA, } ss:
District of Kentucky, Sixth Judicial Circuit, }

To the Louisville, New Albany & Chicago Railway Company, Greeting:

You are hereby cited and admonished to be and appear at a session of the United States circuit court of appeals for the sixth circuit, to be holden at the city of Cincinnati, in said circuit, on the 30th day of December next, pursuant to an appeal granted by the circuit court of the United States for the district of Kentucky, wherein The Louisville Trust Co. is appellant and you are appellee,

to show cause, if any there be, why the decree rendered as in the said appeal mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 30th day of November, in the year of our Lord one thousand eight hundred and ninety-four, and of the Independence of the United States of America the one hundred and nineteenth.

JNO. W. BARR, *Judge.*

The Louisville, New Albany and Chicago Railway Company accepts services of the within citation.

G. W. KRETZINGER, *Counsel,*
By JAMES S. PIRTLE.

Filed December 29, 1894.

FRANK O. LOVELAND, *Clerk.*

191 UNITED STATES OF AMERICA, } ss:
District of Kentucky, Sixth Judicial Circuit, }

To the Louisville, New Albany and Chicago Railway Company, Greeting:

You are hereby cited and admonished to be and appear at a session of the United States circuit court of appeals for the sixth circuit, to be holden at the city of Cincinnati, in said circuit, on the 30th day of December next, pursuant to an appeal, granted by the circuit court of the United States for the district of Kentucky, wherein Louisville Banking Co. is appellant and you are appellee, to show cause, if any there be, why the decree rendered as in the said appeal mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 30th day of November, in the year of our Lord one thousand eight hundred and ninety-four, and of the Independence of the United States of America the one hundred and nineteenth.

JNO. W. BARR, *Judge.*

The Louisville, New Albany and Chicago Railway Company accepts service of the within citation.

G. W. KRETZINGER, *Counsel,*
By JAMES S. PIRTLE.

Filed Dec. 29, 1894.

FRANK O. LOVELAND, *Clerk.*

192–194 And afterwards, to wit, on May 14, 1895, an order of continuance was entered upon the journal of said court in said cause; which order is in the words and figures following:

United States Circuit Court of Appeals for the Sixth Circuit.

LOUISVILLE TRUST COMPANY, Appellant,
vs.
LOUISVILLE, NEW ALBANY & CHICAGO R. R. Co. and Cases to be Heard on Same Record, Nos. 277 to 295, Inclusive, Appellees.

Nos. 277 to 295. Appeal from the Circuit Court of the United States for the District of Kentucky, at Louisville.

This cause is continued until the next term.

And afterwards, to wit, on June 5, 1895, the following entry was spread upon the journal of said court in said cause; which entry is in *in* the following words and figures, to wit:

195 United States Circuit Court of Appeals for the Sixth Circuit.

LOUISVILLE TRUST COMPANY, Appellant,
vs.
LOUISVILLE, NEW ALBANY & CHICAGO R. R. Co. and Cases to be Heard on Same Record, Nos. 277 to 295, Inclusive, Appellees.

Nos. 227 to 295. Appeal from the Circuit Court of the United States for the District of Kentucky, at Louisville.

These causes came on to be argued this day and were argued in part by Mr. Alexander Humphrey for appellants, and Mr. James S. Pirtle, for appellees, and the hearing of these causes was continued until tomorrow morning at 9.30 o'clock.

And afterwards, to wit, on June 6, 1895, an entry was made upon the journal of said court in said cause, which reads and is as follows:

Court met pursuant to adjournment.
Present: Hon. Wm. H. Taft and Hon. Horace H. Lurton, circuit judges, and Hon. Henry F. Severens, district judge.

LOUISVILLE TRUST COMPANY, Appellant,
vs.
LOUISVILLE, NEW ALBANY & CHICAGO R. R. Co. and Cases to be Heard on Same Record, Nos. 277 to 295, Inclusive, Appellees.

Appeal from the Circuit Court of the United States for the District of Kentucky, at Louisville.

These causes came on to be heard this day for further argument and were argued by Mr. James S. Pirtle and Mr. G. W. Kretzinger, for the appellees, and Mr. St. John Boyle and Mr. L. H. Noble, for the appellants, and the causes were then submitted to the court.

196 And afterwards, to wit, on June 14, 1895, a stipulation was filed in said court in said cause, which reads and is in the words and figures following:

United States Circuit Court of Appeals for the Sixth Circuit.

LOUISVILLE TRUST COMPANY, Appellant, *vs.* LOUISVILLE, NEW ALBANY & CHICAGO R. R. Co. and Cases to be Heard on Same Record, Nos. 277 to 295, Inclusive, Appellees.	Nos. 277 to 295. Appeal from the Circuit Court of the United States for the District of Kentucky, at Louisville.

It is agreed that the appellees may have until June 22nd to file responsive brief in these causes.

And afterwards, to wit, on June 22nd, 1896, the following opinion was filed in said court in said cause, which reads and is as follows:

Opinion.

197 United States Circuit Court of Appeals, Sixth Circuit

Nos. 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295 (nineteen cases).

LOUISVILLE TRUST CO. *et al.*, Appellants, *vs.* LOUISVILLE, NEW ALBANY & CHICAGO R. R. Co., Appellee.	Appeals from the Circuit Court of the United States for the District of Kentucky, at Louisville.

Before Taft, circuit judge, and Severens and Hammond, district judges.

Submitted June 6, 1895.
Decided June 22, 1896.

These are nineteen appeals from the same decree.

The bill was filed by The Louisville, New Albany & Chicago Railroad Company (hereafter called the New Albany Company), as a corporation of Indiana, against the Ohio Valley Improvement and Contract Company (hereafter called the improvement company), a Kentucky corporation, and numerous other defendants, citizens of Kentucky, to obtain the cancellation of that which purported to be a guaranty of the New Albany Company indorsed upon bonds held by the defendants and issued by the Richmond, Irvine, Nicholasville and Beattyville Railroad Company (hereafter called the Beattyville Company), and to enjoin suits thereon.

The bill averred that the pretended guaranty had been fraudulently placed upon the Beattyville Company's bonds by a minority of the complainant's directors, who, as individuals, had secured the option to buy the bonds at a low price; that the guaranty was void because authorized by a pretended meeting of the directors at which there was no quorum; that by the law of Indiana no valid guaranty could be made by the complainant unless a majority of its stockholders filed a written petition for the same with the board of

directors, that no such petition had been filed, and that for this reason also, the pretended guaranty was null and void.

The answer of the improvement company and the other defendants raised the question of jurisdiction by denying that the complainant was a corporation and citizen of Indiana, and averring that it was a corporation of Kentucky, and thus a citizen of the same State as many of the defendants. It averred that the guaranty was within the power of the board of directors of the New Albany Company and that it was for a good and valuable consideration, and denied all the charges of fraud against the directors contained in the bill.

The question of jurisdiction was heard before Mr. Justice Brewer and Mr. Justice (then Judge) Jackson, and the jurisdiction of the court was sustained. A demurrer to the bill on the ground that it did not state any ground for equitable relief was overruled by Judge Lurton. Subsequently some of the defendants, among whom
198 was the improvement company, came in and consented that the guaranty on their bonds might be canceled. By supplemental bills, other holders of bonds were made defendants. In addition to other defenses set up in their answers many of the defendants averred that they were *bona fide* purchasers for value of the bonds without notice of any defects in the guaranty. The issues thus raised were heard before Judge Barr, and he decided them all in favor of the complainant and entered a decree directing a cancellation of all the guaranties, and enjoining defendants from prosecuting suits thereon. Nineteen of the defendants who claimed as *bona fide* purchasers took the present appeals. The following list shows the appellants and the number of bonds held by each.

Bonds for $1,000 *Each.*

The Louisville Trust Company	125
The Kentucky National bank	18
The Louisville Banking Company	55
Theodore Harris	20
John H. Leathers	15
B. Hollman	10
A. J. Ross	10
W. C. Nones	5
James A. Shuttleworth	10
W. H. Dillingham	6
A. Schwabacher	5
R. L. Whitney	5
Ronald Whitney	5
Wm. M. Charlton	5
S. A. Cannon	4
M. A. Huston	3
John T. Bate, Jr.	2
Burton A. Duerson	2
Ben. C. Weaver	2
	307

In order to make clear the questions of jurisdiction and corporate authority here to be considered, it is necessary to set out in some detail the history of the New Albany corporation and the legislation in Indiana and Kentucky affecting them, together with circumstances under which the guaranty was indorsed on the bonds.

The Louisville, New Albany & Chicago Railroad Company was organized in 1873 as a railroad corporation of the State of Indiana, under the act of the legislature of that State, passed March 3, 1865. That act provided among other things that "any railroad company incorporated under the provisions of this act shall have the power and authority to acquire by purchase or contract, the road, road-bed, real and personal property, rights and franchises of any other railroad corporation or corporations which may cross or intersect the line of such railroad company or any part of the same, or the use or enjoyment thereof, in whole or in part; may also purchase or contract for the use and enjoyment, in whole or in part, of any railroad or railroads lying within adjoining States, and may assume such of the debts and liabilities of such corporation as may be deemed proper." (Revised Statutes of Indiana, section 3951.)

The statutes of Indiana applicable to the company also
199 provided that every such railroad corporation should "have capacity to hold, enjoy and exercise within other States, the aforesaid faculties, powers, rights, franchises and immunities, and such others as may be conferred upon it by any law of this State or of any other State in which any portion of its railroad may be situate or in which it may transact any part of its business." (Revised Statutes of Indiana, 3949.)

On April 8, 1880, the legislature of Kentucky passed an act entitled "An act to incorporate the Louisville, New Albany & Chicago Railway Company."

It was as follows:

"Be it enacted by the General Assembly of the Commonwealth of Kentucky:

"1. That the Louisville, New Albany & Chicago Railway Company, a corporation organized under the laws of the State of Indiana, is hereby constituted a corporation, with power to sue and be sued, contract and be contracted with, to have and use a common seal, with the power incident to corporations, and authority to operate a railroad.

"2. That the Louisville, New Albany & Chicago Railway Company is hereby authorized to purchase or lease for depot purposes, in the city of Louisville or county of Jefferson, such real estate as may be deemed by it to be necessary for passenger and freight depots and transfer, machine shops, and for all switches or turnouts necessary to reach the same; and is also authorized to connect with any railroad or bridge now operated or used, or which may be hereafter operated or used, in said county of Jefferson, and may build any such connecting lines, or lease or operate the same, and for all such purposes shall have the right to condemn all property required for the carrying out of the objects herein named, and may bond the

same, and secure the payment of any such bonds by a mortgage of its property, rights and franchises.

"3. That said corporation shall have the power and right to condemn all property in the city of Louisville or county of Jefferson, in this State, which may be deemed by it to be necessary for the purposes set out in this act; and that the proceedings for that purpose shall be instituted either in the Jefferson court of common pleas or the Louisville chancery court, and shall be carried on, as nearly as may be, as actions at law by ordinary proceedings. Warning orders against non-residents, absent defendants, or unknown owners of property must be published three times in one of the daily newspapers published in said city of Louisville, State of Kentucky, the last publication at least ten days before the trial. The owners of distinct parcels of one contiguous tract may all be included in one proceeding, or any one or more of them holding contiguous tracts may be proceeded against in a separate action. The courts shall make all such rules, orders, and judgments as will secure a fair trial by an impartial jury of said city or county, and shall give proceedings upon its docket as soon as the parties are before the court and the issue made up. The jurors shall be sworn truly to ascertain and determine by their verdict the amount of compensation each owner will be entitled to if his land or property described in the petition be condemned. The court in which these proceedings are brought shall have power to assign a day for the trial of the case as soon as the petition is filed. Upon the return of the verdict, the court shall render judgment vesting title to the property described in the proceedings in said corporation, said judgment to take effect upon the payment into court by said corporation of the amount of money named in the verdict, within thirty days after the rendition of said judgment; and should said corporation fail to pay said money within said time, the said proceedings shall be dismissed without prejudice to other and subsequent proceedings.

200 "4. This act shall take effect from and after its passage.

"Approved April 8, 1880."

On May 5, 1881, the Louisville, New Albany & Chicago Railroad Company of Indiana, and the Chicago, Indianapolis & Air Line Railway Company, a corporation of the State of Illinois, under and by virtue of the laws of the States of Illinois and Indiana, consolidated their stock and their property. In the third article of the consolidation it was provided, among other things, as follows:

"Article 3. The said consolidated corporation hereby created shall be vested with all the rights, privileges, immunities and franchises which usually pertain to railroad corporations under the laws of the respective States of Illinois and Indiana, wherein the lines of its railroad are situate, and shall also be vested with all and singular the rights, powers, privileges, immunities, capacities and franchises which before the execution of these articles *was* lawfully possessed or exercised by either of the parties hereto."

This article was in accordance with the statutes of Indiana permitting such consolidation.

By article 9 it was provided that the principal place of business and general office of the consolidated corporation should be established in the city of Louisville, Kentucky.

Upon April 7, 1882, subsequent to the consolidation, the Kentucky legislature passed an act entitled "An act to amend an act, entitled 'An act to incorporate the Louisville, New Albany & Chicago Railway Company, approved April 8, 1880:'"

"Be it enacted by the General Assembly of the Commonwealth of Kentucky:

"1. That the Louisville, New Albany & Chicago Railway Company is hereby authorized and empowered to indorse or guarantee the principal and interest of the bonds of any railway company now constructed, or to be hereafter constructed, within the limits of the State of Kentucky, and may consolidate its rights, franchises and privileges with any railway company authorized to construct a railroad from the city of Louisville to any point on the Virginia line, such indorsement, guarantee, or consolidation to be made upon such terms and conditions as may be agreed upon between said companies; or it may lease and operate any railway chartered under the laws of the State of Kentucky: Provided, it shall not lease or consolidate with any two lines of railway parallel to each other; or it may make such traffic arrangement or agreement with any such aforementioned road as its board of directors may deem proper.

"2. This act shall take effect from and after its passage.

"Approved April 7, 1882."

In 1883, the legislature of Indiana enacted an amendment to the statutes governing railroad corporations of that State, which has since appeared as sections 3951*a*, 3951*b* and 3951*c* of the Revised Statutes as follows:

"3951*a*. Guaranty of bonds of another company.—The board of directors of any railway company organized under and pursuant to the laws of the State of Indiana, whose line of railway extends across the State in either direction, may, upon the petition of the holders of a majority of the stock of such railway company, direct the execution by such railway company of an indorsement guaranteeing the payment of the principal and interest of the bonds of any railway company organized under or pursuant to the laws of any adjoining State, the construction of whose line or lines of railway would be beneficial to the business or traffic of the railway so indorsing or guaranteeing such bonds.

"3951*b*. Petition of stockholders.—2. The petition of the
201 stockholders specified in the preceding section of this act shall state the facts relied on to show the benefits accruing to the company indorsing or guaranteeing the bonds above mentioned.

"3951*c*. Limitation of the power.—3. No railway company shall under the provisions of this act, indorse or guarantee the bonds of any such railway company or companies as is above mentioned to an amount exceeding one-half of the par value of the stock of the railway company so indorsing or guaranteeing, as authorized under this act."

In 1888, the New Albany Company, as a corporation of Indiana and Kentucky, by a vote of their stockholders and directors, leased the Louisville Southern railroad, running from Louisville to Burgin on the Cincinnati Southern railroad. The Beattyville road connecting as it did with a branch of the Louisville Southern would, if completed, have extended the connections of the New Albany Company a very considerable distance on the way to the Virginia line. Pending this lease, and on October 9, 1889, the board of directors of the New Albany Company passed a resolution ordering the execution of a contract with the Ohio Valley Improvement and Contract Company, the principal contractor for the building of the Beattyville railroad, by which the New Albany Company, as a corporation of Kentucky and Indiana, agreed to guarantee the first-mortgage bonds of the Beattyville Company to the extent of $25,000 per mile of constructed road, as they should be delivered to the improvement company in performance of the contract of construction, in consideration of the delivery by the improvement company to the New Albany Company of three-fourths of the stock of the Beattyville Company, $3,000 at par of the stock being delivered for each $4,000 of bonds guaranteed. The language of the contract, which was spread upon the minutes of the board, began thus:

"This agreement, made between the Ohio Valley Improvement & Contract Company, a corporation organized and existing under the laws of the State of Kentucky, party of the first part, and the Louisville, New Albany & Chicago Railway Company, a corporation organized and existing under the laws of the States of Indiana and Kentucky, and hereinafter called the New Albany Company, party of the second part, witnesseth, etc."

The fourth clause of the contract was as follows:

"Fourth. The said New Albany Company agrees to and with the said construction company that it will, from time to time, as the said first-mortgage bonds are earned by and delivered to the said construction company pursuant to terms of their said construction contract, guarantee the payment by the said Beattyville Company of the principal and interest of the said bonds in manner and form following, that is to say, by indorsing upon each of said bonds a contract of guaranty as follows:

"'For value received the Louisville, New Albany & Chicago Railway Company hereby guarantees to the holder of the within bond the payment by the obligor thereon, of the principal and interest thereof in accordance with the tenor thereof.

"'In witness whereof the said railway company has caused its corporate name to be signed hereto by its president and its seal to be attached by its secretary.'"

The testatum clause of the contract was as follows:

"In witness whereof the parties hereto have caused their

202 corporate names to be subscribed by their respective presidents and their corporate seals to be attached by their secretaries.

(Signed) OHIO VALLEY IMPROVEMENT & CONSTRUCTION CO.,
By A. E. RICHARDS, *President.*

Attest:
[SEAL.] WM. CORNWALL, JR., *Secretary.*

LOUISVILLE, NEW ALBANY & CHICAGO RAILWAY CO.,
By WM. DOWD, *President.*

Attest:
[SEAL.] JOHN A. HILTON,
Assistant Secretary."

The contract was complied with by both parties until the change in the management of the New Albany hereafter described. The stock was delivered to the New Albany Company, and the following guaranty was indorsed on each of 1,185 bonds of $1,000 each under the corporate seal of the company.

"For value received the Louisville, New Albany & Chicago Railway Company hereby guarantees to the holder of the within bond the payment by the obligor thereon of the principal and interest thereof in accordance with the tenor thereof. In witness whereof the said railway company has caused its corporate name to be signed hereto by its president and its seal to be attached by its secretary.

Attest:
[SEAL.] JOHN A. HILTON,
Assistant Secretary.

LOUISVILLE, NEW ALBANY & CHICAGO RAILWAY CO.,
By WM. DOWD, *President.*"

The bonds thus guaranteed were placed on the market by the improvement company, and many of them were sold before March, 1890. In that month the annual meeting of the stockholders of the New Albany Company was held, the old directors were ousted and new ones elected. The contract of guaranty on those bonds was at once repudiated by the new board as *ultra vires* and fraudulent, and the improvement company notified. This bill was soon after filed.

There was no evidence whatever introduced by complainant to sustain the averments of fraud against the old directors, and it is manifest that they were in good faith convinced that the guaranty would secure to the New Albany road a valuable connection, and made the contract from that motive alone.

The evidence also failed to establish that the meeting of the directors, at which the contract of guaranty was approved and ordered to be executed, was not in every respect a lawful meeting of the directors. A stipulation was entered into by the parties,

which in effect eliminated from the cases all question as to the regularity of the directors' meeting.

It was conceded by nearly all the appellants here that no petition for the guaranty was filed with the board by a majority of the stockholders, and the evidence shows this beyond controversy. It appeared clearly that all the appellants were *bona fide* purchasers for value without notice of any defect, except the Kentucky National bank and the Louisville Banking Company. The facts concerning their knowledge are stated in the opinion.

The bill of complainant tendered back to the improvement company the stock received by the New Albany Company, and it was deposited in the office of the clerk. The Beattyville Company and the improvement company went on with the work of construction in the spring and summer of 1890, but were soon compelled
203 to suspend it, and both became insolvent and passed into the hands of receivers.

TAFT, circuit judge, after stating the facts as above, delivered the opinion of the court:

The first question made by the appellants is one of jurisdiction. It is contended that the complainant below is a corporation and citizen of Kentucky and therefore that this is an action between citizens of the same State. It is said that the acts of the Kentucky legislature quoted above made the complainant a Kentucky corporation, and that when it sues in Kentucky it must be treated as a citizen thereof. To this, counsel for the complainant respond that the acts of Kentucky relied on did not create a new corporation, but were a mere license to the Indiana corporation to do business in Kentucky. In our view of the case it is not necessary, in considering the question of jurisdiction to decide whether the Kentucky acts created a new corporation or not. If they did create a new corporation it was not the new corporation which was bringing the suit below. That was the corporation of Indiana, a citizen of Indiana, and not a citizen of Kentucky. Under the decision of the Supreme Court of the United States in The Nashua Railroad against The Lowell Railroad, 136 U. S. 356, it is clear that in order to protect the rights accruing to the Indiana corporation as distinguished from those belonging to its Kentucky counterpart, the Indiana corporation might bring suit in a Federal court in Kentucky as a citizen of Indiana. This is also in accordance with the decision of the court of appeals of Kentucky in The Newport & Cincinnati Bridge Company *v.* R. H. Woolley, 78 Ky. 523. In that case it appeared that there were two companies, one organized under the laws of Ohio and the other under the laws of Kentucky as the Newport and Cincinnati Bridge Company, having the same incorporators. The suit was brought against the Ohio corporation as a non-resident in a State court of Kentucky by one claiming compensation for services rendered to it, and it was held that the Ohio corporation might be sued in Kentucky as a non-resident, although there was present in Kentucky as its general agent a Kentucky corporation of the same name and same management, and owning the same bridge.

But even if the Kentucky acts did create a new corporation out of the Louisville, New Albany & Chicago Railway Company in 1880, the new corporation, though created by Kentucky law, was, for purposes of Federal jurisdiction, a citizen of Indiana. This follows from the decision of the Supreme Court of the United States in the case of The St. Louis & San Francisco R'y Co. *v.* Etta James, 161 U. S. 545. The St. Louis & San Francisco R'y Company was a corporation organized under the laws of Missouri. It owned and operated a railway in Arkansas. By virtue of the laws of the latter State it was required to file a copy of its charter and a certificate of its corporation with the secretary of state. It was declared to become thereby a domestic corporation of the State of Arkansas.

The action was for a personal injury inflicted in Missouri. The plaintiff was a citizen of Missouri and sued the corporation in the Federal court in Arkansas as a corporation of Arkansas. The Supreme Court decided that the indisputable presumption that the incorporators of the company were citizens of the State granting incorporation applied only when the incorporators were individuals, and that when the act of incorporation purported to create a new corporation out of the corporation of another State, the new corporation, for purposes of Federal jurisdiction, must be regarded as a citizen of the same State as that of the constituent corporation. It was therefore held that though the St. Louis & San Francisco Railway Company might be a corporation of Arkansas by virtue of the statute making it such, nevertheless, because the law professed to make the new corporation out of a corporation of Missouri, the citizenship of the new corporation must be the same as that of the old, and there was consequently no jurisdiction. So in the case at bar, as the Kentucky acts professed to incorporate a corporation of Indiana, there is no presumption that the corporators are citizens of Kentucky which will make, for purposes of Federal jurisdiction, the new Kentucky corporation a citizen of that State. It follows that whether the complainant in the bill below must be regarded as a corporation of Indiana or a corporation created by the acts of the Kentucky legislature already referred to, in either case it was a citizen of Indiana for the purposes of Federal jurisdiction. The cause was therefore one arising between citizens of different States, and the court below had full jurisdiction.

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We come now to the question whether the company which appears to have entered into the contract of guaranty had the corporate power to do so. The contract purports to have been made by the New Albany Company as a corporation both of Indiana and Kentucky. We shall first inquire, therefore, whether there was a Kentucky corporation and whether it had the necessary corporate authority. We cannot escape the conclusion that it was the intention of the Kentucky legislature, fitly expressed by the act of April 7, 1880, to make that which was an Indiana corporation a corporation of the State of Kentucky. The act is entitled "An act to incorporate the Louisville, New Albany & Chicago Railway Company." It is true that the title of the act is not controlling in reaching the intention of the legislature. (Goodlett *v.* Louisville &

Nashville Railroad, 122 U. S., 391.) But when the title of the act corresponds with the expressly declared intention of the act, it may be referred to as enforcing that intention. The first section of the act provides:

"That the Louisville, New Albany & Chicago Railway Company, a corporation organized under the laws of the State of Indiana, is hereby constituted a corporation, with power to sue and be sued, contract and be contracted with, to have and use a common seal, with the power incident to corporations, and authority to operate a railroad."

It would be difficult to express in concise language any more clearly than is here done the intention of the legislature to create a new corporation. By the second section of the act the corporation thus created, is authorized to purchase or lease, for depot purposes, in the city of Louisville or county of Jefferson, all necessary real estate; is authorized to connect with any railroad or branch in said county of Jefferson, and to build connecting lines, or to lease or operate the same, and to condemn real estate required to carry out the objects named in the act, to issue bonds, and to secure the payment of such bonds by a mortgage on its corporate rights and franchises. By the third section of the act a form of procedure is
205 prescribed by which the condemnation proceedings may be carried on, and courts are named which shall have jurisdiction of the same. It may be too much to say that these are powers never conferred by the legislature of one State upon the corporation of another, but it is certainly true that they are powers more naturally and generally conferred by a State upon a body of its creation. The franchises and corporate rights to be mortgaged could hardly be construed to be the franchises conferred by Indiana, because those are usually regarded as wholly under the legislative control of the government which granted them. It is true that there is no provision in the incorporating act for stock, and there are many provisions frequently made in the organization of new companies, by incorporating individual incorporators, which are here omitted; and if it is not in the power of a State to incorporate the corporation of another State by adoption, so to speak, then this act might very well be construed only to effect a license to the Indiana corporation to do the business and exercise the powers in the act named, in the State of Kentucky, so far as they may be consistent with its powers and limitations of power in its Indiana charter. Under such a construction the first section of the act, in so far as it attempts to create a Kentucky corporation, would have to be regarded as merely nugatory. But it is not true that one State may not incorporate a corporation of another State as such. It may be done, too, without any specific provisions for the stock or internal government of the new corporation. This is expressly settled by several decisions of the Supreme Court of the United States.

Railroad *v.* Harris, 12 Wall., 65.
Railroad *v.* Vance, 96 U. S., 450.
Clark *v.* Bernard, 108 U. S., 436.
Graham *v.* Hartford R. R., 118 U. S., 161.

In a case of the same character, decided in this court, The Western & Atlantic R. R. Co. *v.* Roberson, 22 U. S. App. 187, the same result was reached. In that case Judge Lurton, who delivered the opinion of the court, after referring to the case of Railroad Co. *v.* Vance, *supra*, and its effect said:

"Comment was made in that case, as in this, that the new corporation as such had no shareholders and no formal organization. A corporation is after all nothing more or less than a fiction of the law. We see no reason why the ordinary constituency of a corporation, such as shareholders, directors and officers, may not be dispensed with by a legislature untrammeled by constitutional restrictions by the substitution of another entity, fictitious though it may be, as the necessary constituency of the new corporation. The shareholders in the old corporation become, for the purpose of the new creation, shareholders in the new. The directors and officers of the old entity become for the formal purposes of the new creation and its operation, the directors and officers of the new organization. This identity of ultimate constituency does not necessarily operate to defeat the legislative purpose to make a new corporation. The old organization *quoad hoc* is the new corporation. Yet for the purposes of the new, as to its contracts, obligations, liabilities and property, there is no such blending of the two as to make them in contemplation of law identical."

In the light of these authorities it is impossible to conclude that the act of Kentucky of 1880 was a mere license act.

The effect of the consolidation of the Indiana Company
206 with an Illinois corporation in 1881 has been made the subject of a very extended discussion in the briefs of counsel for the appellee. On it they base a contention that the Kentucky corporation ceased to exercise its franchises thereafter because the property in Kentucky became the property of the consolidated Indiana and Illinois corporation which was not and could not be the constituent of the Kentucky corporation. We do not perceive that this consolidation creates any difficulty. The Kentucky corporation having been once established could not die except by its own act or that of the State which gave it being. Everything it had acquired in the way of property remained in it after the consolidation of its constituent with the Illinois corporation. It was not and could not be ousted of its franchise thereby. The Kentucky corporation when incorporated, was intended by the legislature of Kentucky to be under the same organization and the management as the Indiana company. When the incorporators of the Indiana company added others to their number by virtue of the laws of Indiana, and to this extent changed the management, the franchises which the incorporators had obtained by the incorporation of the old company in Kentucky were simply transferred by express provision of the articles of consolidation to the new organization. If it were necessary to have such a transfer approved by the Kentucky legislature, we have it recognized and approved in the act of April 7, 1882, in recognizing and adding to the powers of the Kentucky corporation, which was then being managed by the consolidated

corporation of Indiana and Illinois. The possibility of implied recognition and acquiescence in the effect of a consolidation by subsequent legislation is very clearly shown in the case of McAuley *v.* C. C. & I. R. Co., 83 Ill. 348, and in Mead *v.* N. Y. H. & N. R. Co., 45 Conn. 199. Analogous instances of legislative recognition and acquiescence in corporate consolidation are found in United States *v.* The Southern Pacific Railroad Company, 45 Fed. Rep. 596; Railroad Co. *v.* Pool, 32 Fed. Rep. 451. It is urged that, by the consolidation, the entity of the Indiana corporation which had been adopted as the constituent of the Kentucky corporation, ceased to be, and a new being appeared, a wholly different individual, in the shape of the consolidated corporation. It is clear from the Indiana statute of consolidation and the decisions of that State construing their effect, that whether the old constituent survives in the new consolidated corporation or dies, the new corporation has all the attributes of the old.

L. N. A. & C. R. Co. *v.* Bonnie, 117 Indiana, 501–504.

If one of these attributes was that of being the constituent of a Kentucky corporation, there was no reason why the new corporation should not continue to enjoy that relation provided objection was not made by the Kentucky legislature. Instead of objecting, the legislature, as we have seen, affirmatively approved the new condition brought about by the consolidation by the act of 1882.

It is said that there is no evidence that either the old Indiana company or the consolidated corporation of Indiana and Illinois ever accepted the charter conferred by the act of 1880, or the amendment thereto of 1882. There was no specific provision in either of the acts that their benefits should be accepted by the railroad company in any formal way. In such a case it is probable that
207 acceptance would be presumed and that the act would be operative without any act of the company.

Zabriskie *v.* Cleveland, etc., R. R., 23 How. 381, 396.

But if acceptance is necessary, it will settled that it may be shown by acts *in pais.*

Zabriskie *v.* Cleveland, etc., R. R. Co., 23 How. 381.
Russell *v.* McLellan, 14 Pick. 63.
McKay *v.* Beard, 20 S. C. 156.
Hammond *v.* Strauss, 53 Md. 1.
1 Thompson on Corporations, sec. 63.

The record shows that in 1881, before the consolidation, the Louisville, New Albany & Chicago Railroad Company, acting avowedly as a corporation of Kentucky, took deeds to itself of land in Jefferson county and had the same recorded. The evidences of action by the consolidated corporation of Indiana and Illinois under and by virtue of the Kentucky charter are ample. Upon March 24, 1884, there was recorded in Jefferson county, Kentucky, the mortgage of the Louisville, New Albany & Chicago Railroad Company to the Farmers' Loan and Trust Company, in which the mortgagor was recited therein to be a corporation duly created and existing

under the laws of the State of Indiana and State of Kentucky. The mortgage conveyed the railway and other property in Indiana and in Kentucky. In January, 1886, there was executed a similar mortgage with the same recital which covered the terminals in the city of Louisville and the railroad between the city of Louisville and the city of New Albany, and the railway of the corporation lying in Jefferson county, Ky. In February, 1887, the Louisville, New Albany & Chicago Railway Company, reciting that it was a corporation of Kentucky and that it was duly empowered as such by its charter passed by the General Assembly of the Commonwealth of Kentucky to condemn lands, filed its petition in the Jefferson county court to obtain condemnation of certain land in Jefferson county, procured a decree, paid the money and took possession of the land. Two petitions for removal to the Federal court were filed by the company as a Kentucky corporation in Indiana on the ground that it was not a resident of Indiana. In 1886, the stockholders and directors of the Louisville, New Albany & Chicago Railway Company, reciting it to be a corporation of Indiana and a corporation of Kentucky, became the lessee of the Louisville Southern road, extending from Louisville to Burgin. The road was operated under this lease for the period of nearly two years. From this evidence we have not the slightest doubt that both acts of the Kentucky legislature were accepted and the privileges conferred therein were enjoyed by both the Indiana corporation and its successor, the consolidated company of Indiana and Illinois, with the full knowledge and acquiescence of its directors and stockholders. The averments of the answer are that the first Kentucky act was procured by the old Indiana company and the second act by the consolidated corporation of Indiana and Illinois. No direct evidence was offered on this point, but from the facts which have been adduced it can be easily inferred that all the Kentucky legislation was at the instance of those persons who were interested in the old Indiana and the new consolidated corporations.

208 The next inquiry is whether the Kentucky corporation had power to make the guaranty. By the act of 1882, it was given express authority to indorse or guarantee the principal and interest of the bonds of any railway company then constructed, or to be thereafter constructed, within the limits of the State of Kentucky, and to consolidate its rights, franchises and privileges with any railway company authorized to construct a railroad from the city of Louisville to any point on the Virginia line, such indorsement, guarantee or consolidation to be made upon such terms and conditions as might be agreed upon between the companies. It had, by express statutory authority, leased the Louisville Southern road. The Richmond, Nicholasville, Irvine & Beattyville Railroad Company was a railroad in the State of Kentucky to be thereafter constructed, and when constructed it would continue the Louisville Southern road, then under lease to the New Albany Company, toward the Virginia line. Under these circumstances it would seem to be clearly within the authority conferred for the Kentucky company to guarantee the bonds of the Beattyville Railroad Company

and to acquire its stock as a consideration therefor. It is true that ordinarily one corporation has no power to acquire stock in another, because it involves the investment of the corporate funds in an enterprise over which the corporate officers have no control, and risks them in a business which is foreign to that for which the stockholders advanced their money. But it has been decided that a power to acquire stock in another company may be implied from the power to consolidate with such company as a proper step toward consolidation, or as necessarily included in the grant of so large a power.

Tod *v.* Kentucky Union Land Co., 57 Fed. R. 48.
Same case in this court, 22 U. S. App. 267.
Hill *v.* Nisbet, 100 Ind. 341.

The Kentucky corporation here is not only given the right to consolidate with other railway corporations and to lease their roads, but it is given the power to indorse or guarantee their bonds "on such terms and conditions as may be agreed upon between the parties." It seems clear that if a company may guarantee bonds of another company and risk its capital to that extent in another enterprise, the power to make such conditions and terms for the guarantee as may be agreed upon would imply capacity to receive as consideration therefor stock in the company the debts of which are thus contingently assumed. The power to guarantee the bonds of another company is of course given only to obtain a valuable connection and feeder in the company thus aided. The natural and best mode of rendering permanent such a connection short of consolidation is to acquire a majority of the stock in the company. Hence the power to acquire stock may be implied from the very broad power to guaranty.

It is pressed upon us, however, that the Indiana corporation had no power to make the guaranty except on conditions not here complied with which were made indispensable by the Indiana act of 1883, and it is contended that the Kentucky corporation could wield no powers denied to its constituent corporation in the State of its origin. This contention is wholly untenable. Whatever the effect of the statute of 1883 on the Indiana corporation it did not
209 and could not restrict or in any way narrow the powers of the Kentucky corporation theretofore created. That derived its entire authority and power from the State of Kentucky and the Indiana legislature could not, if it would, restrict or embarrass the exercise of those powers by a Kentucky corporation in Kentucky. The question is settled by the case of Clark *v.* Bernard, 108 U. S. 436. In that case the Boston, Hartford & Erie railroad was a corporation created by the State of Connecticut. It purchased the franchises and railroad of the Hartford, Providence & Fishkill railroad, a corporation of the State of Rhode Island. The State of Rhode Island then passed an act incorporating the Boston, Hartford & Erie railroad as a corporation of Rhode Island and imposed as a condition of such incorporation that it should give a bond for $100,000. The bill was by the assignees in bankruptcy of the

Boston, Hartford & Erie railroad to restrain the treasurer of the State of Rhode Island from taking possession of securities amounting to $100,000 which that company had deposited with the State as security for the performance of its bond. It was objected that by its original charter in Connecticut, the Boston, Hartford & Erie Railroad Company had no power to receive a grant of such franchises as those conferred by the legislature of Rhode Island, and therefore that its incorporation by Rhode Island and the acts done under it were null and void. Mr. Justice Matthews, speaking for the Supreme Court, disposed of this claim in the following language:

"It is now argued by counsel for the appellees that the party which, in all these transactions, was dealing with the State of Rhode Island was the Boston, Hartford & Erie Railroad Company, in its character as a corporation of the State of Connecticut; that as such it had no power, under the charter granted by that State, to build or own a railroad directly connecting Boston and Providence, nor had it, as such, any capacity to receive a grant of such a franchise; that, consequently, everything done or attempted in that behalf was *ultra vires* and void.

"But the Boston, Hartford & Erie Railroad Company was also a corporation of Rhode Island. As such it owned and operated a railroad within that State, and had received and exercised franchises under its laws to which it was in all respects subject. It was the assignee of the road and rights connected therewith, formerly belonging to the Hartford, Providence & Fishkill Railroad Company; and it was this corporation, dwelling and acting in Rhode Island, that the legislature, by the act in question, authorized to exercise the additional powers it conferred.

"If it had no previous existence as a corporation under the laws of Rhode Island, it would have become such by virtue of the act in question. For, although as a Connecticut corporation it may have had no capacity to act or exist in Rhode Island for these purposes, and no capacity by virtue of its Connecticut charter to accept and exercise any franchises not contemplated by it, yet the natural persons who were corporators might as well be a corporation in Rhode Island as in Connecticut; and by accepting charters from both States could well become a corporate body, by the same name and acting through the same organization, officers and agencies in each, with such faculties in the two jurisdictions as they might severally confer. The same association of natural persons would thus be constituted into two distinct corporate entities in the two States, acting in each according to the powers locally bestowed, as distinctly as though they had nothing in common either as to name, capital or membership. Such was, in fact, the case in regard to this company, so that in Rhode Island it was exclusively a
210 corporation of that State, subject to its laws and competent to do within its territory whatever its legislation might authorize.

"Nor do we see any reason" (as was said by this court, Mr. Justice Swayne, delivering its opinion in Railroad Co. *v.* Harris, 12 Wall. 65–82) "why one State may not make a corporation of another State,

as there organized and conducted, a corporation of its own, *quo ad* any property within its territorial jurisdiction. That this may be done was distinctly held in The Ohio & Mississippi Railroad Company *v.* Wheeler, 1 Black. 297.

"The same view was taken in Railway Company *v.* Whitten, 13 Wall. 270; in Railroad Company *v.* Vance, 96 U. S. 450; and in Memphis & Charleston R. R. Co. *v.* Alabama, 107 U. S. 581. The question of the powers of the Boston, Hartford & Erie Railroad Company, as a corporation in Rhode Island, and the legal effect of its acts and transactions performed in that State, and not by those of Connecticut, which have no force beyond its own territory. Its results, therefore, that the doctrine of *ultra vires*, as here urged by the appellees, has no place in this controversy."

The doctrine of this case was reaffirmed in that of Graham *v.* Boston, Hartford & Erie R. R. Co., 119 U. S. 161.

If it be suggested that the restriction of the act of 1883 only affected the internal management of the corporation and the division of control as between the directors and stockholders, and that in the absence of any provision for such internal management in the Kentucky charter, it must be presumed to have been the intention of the Kentucky legislature that the action of the directors of the Kentucky company in making a guaranty should be subject to the same restriction as that imposed on the directors of the Indiana corporation, it may be answered that the Kentucky act of 1882, conferring the power of guaranty on the Kentucky corporation, was enacted before the Indiana statute requiring the assent of the stockholders to a guaranty. Nor can we infer that a power conferred in such general words as that of guaranty in the Kentucky act of 1882 was intended to be restricted in the manner suggested, even if the Indiana act of 1883 had been in force at the time of the former's enactment. The form of the grant negatives such an inference and affirmatively implies that the power is to be exercised in the manner in which such a power, thus generally conferred, is usually exercised. It follows that the Kentucky corporation had the unrestricted power to place a guaranty upon the bonds of another railroad corporation in Kentucky under the circumstances admitted here, without respect to any limitation imposed by the Indiana statute on the constituent Indiana corporation. The guaranty was, therefore, a valid obligation of the Kentucky corporation enforceable against its property in Kentucky.

It is argued on the authority of Railway Company *v.* Allerton, 18 Wall. 233, that the power to enter into such a guaranty could not be exercised by the board of directors, but that it must have had the sanction of the stockholders. In the case referred to, it was held that a stockholder in a railroad company could enjoin the board of directors from exercising the power vested by statute in the company of increasing its capital stock on the ground "that a change so organic and fundamental" could not be made by the directors alone. Certainly if the effect of this case as an authority be limited to the facts of it, it will not sustain the argument based on it. There is nothing in a guaranty of the bonds of a connecting line

211 which changes in the slightest the relations between the stockholders. Counsel rely, however, on the language of Mr. Justice Bradley, in which he says not only that changes in the extent of the membership are fundamental, but also that changes in the object of the corporation are of that character.

He said: "First, as it respects the purpose and object. This may be said to be the final cause of the association, for the sake of which it was brought into existence. To change this without the consent of the associates would be to commit them to an enterprise which they never embraced, and would be manifestly unjust."

It is contended that the guaranty of the bonds of a connecting line is such a change in the purpose and object of the corporation as to be "fundamental." We do not think so. Where the charter of a corporation expressly confers this power for the purpose of securing valuable business connections its exercise is, within the ordinary business transactions of the company, important, it is true, but still not an organic change in the object of the original incorporation. In Zabriskie *v.* Cleveland, etc., R. R. Co., 23 How. 381, 397, Mr. Justice Campbell, in speaking of the acceptance of a much broader power than that of mere guaranty, said that it was not "such a radical change in their constitution as to authorize members to say that its adoption without their consent is a dissolution."

Mr. Justice Bradley evidently had in mind, in the language quoted, a change in the character of the business like a change from transportation to manufacturing. He shows this by a sentence in his opinion on page 236, where he says: "If the charter provides that the capital stock may be increased, or that a new business may be adopted by the corporation, this is undoubtedly an authority for the corporation (that is the stockholders) to make such a change by a stockholders' vote in the regular way."

The guaranty in the case at bar was only permitted by the statute as an incidental benefit to the main business of the corporation, which remained unchanged in character. Reference is made to the opinion of this court in Humboldt Mining Company *v.* Variety Iron Works Co., 22 U. S. App. 334, in which we said (page 343): "The objection to the guaranty is that it risks the funds of the company in a different enterprise and business, under the control of another and different person or corporation, contrary to what its stockholders, its creditors and the State have the right from its charter to expect." The discussion in that case related to the question whether a manufacturing company, without express power to guarantee the debt of another, was vested with it by implication and for the reason stated above, we held that it was not. The case is very different where, as here, the power to guaranty is expressly conferred without limitation. It is then to be considered as a power merely incidental to the main business of the corporation. The stockholders, the creditors and the State are advised by the charter provisions that the company has another instrument placed in its hands for pursuing the main purpose of its organization, involving an additional risk, and it would be much too rigid a construction

to hold that a provision giving such a power involved a change in "the final cause" of the company, and so required that, in each instance of the exercise of the power, a vote of the stockholders must be taken. The danger from an abuse of such a power in the board of directors is not necessarily an argument against its exist-
212 ence, because many powers of the corporation are and must be exercised by the directors, which are liable to great abuse. The directors of a corporation are not the mere agents of the stockholders; they are trustees and representatives, charged with the exercise of all the powers of a corporation which do not involve fundamental changes in the purpose of its incorporators, or in the relation of the stockholders. In Hoyt *v.* Thompson's Executors, 19 N. Y. 216, Judge Comstock, speaking for the New York court of appeals, said:

"The board of directors of a corporation do not stand in the same relation to the corporate body which a private agent holds toward his principal. In the strict relation of principal and agent, all the authority of the latter is derived by delegation from the former, and if the power of substitution is not conferred in the appointment, it cannot exist at all. But in corporate bodies the powers of the board of directors are, in a very important sense, original and undelegated. The stockholders do not confer, nor can they revoke those powers. They are derivative only in the sense of being received from the State in the act of incorporation. The directors convened as a board are the primary possessors of all the powers which the charter confers, and like private principals, they may delegate to agents of their own appointment the performance of any acts which they themselves can perform. The recognition of this principle is absolutely necessary in the affairs of every corporation whose powers are vested in a board of directors. Without it the most ordinary business could not be carried on, and the corporate powers could not be executed."

It is now generally held that the board of directors of a corporation may exercise power conferred on the company to issue bonds and execute a mortgage in the absence of an express provision that the power may only be exercised with the assent of the stockholders.

Cook on Stockholders, section 808.
Thompson *v.* Natches Water and Sewer Co., 68 Miss. 423.
Hodden *v.* K. & G. R. R. Co., 7 Fed. Rep. 796.
Wood *v.* Welen, 93 Ill., 153.
Hindee *v.* Pinkerton, 96 Mass. 387.

It has even been held, though this is more doubtful, that the power to lease a railroad conferred on the corporation owning it, may be exercised by the board of directors without authority from the stockholders.

Beveridge *v.* The New York Elevated Railroad Co., 112 N. Y. 1–21.
Flagg *v.* Manhattan R. R., 10 Fed. 431.
But see Nashua Railroad Company *v.* Boston R. R. Co., 27 Fed. Rep. 825.

If the power to mortgage the entire assets of a company, or to lease its entire plant, does not involve such an organic change for the corporation as to require the assent of the stockholders, it seems manifest that no such change arises from an exercise of the power conferred by statute on a corporation to guarantee the bonds of a connecting company to secure favorable business relations with it.

The conclusion we have reached with respect to the validity and binding character of the guaranty as against the Kentucky corporation, shows that the decree of the court below was erroneous and should be modified, in so far at least as it operated to cause the cancellation of the guaranty as an obligation of the Kentucky
213 corporation and to enjoin suits thereon in Kentucky against the Kentucky corporation.

The original contract of guaranty, however, purported to bind a corporation not only of Kentucky but also of Indiana, and the separate guaranty on each bond is to be given as wide a construction as the contract in pursuance of which it was indorsed. Moreover, where two corporations have the same name and management and are identical in every respect except in the origin of their powers, and in effect are general agents of each other, the presumption from the use of the common name must be that both are intended to be bound, in the absence of some specific restriction in the obligating instrument. There remains to be considered, therefore, the question whether the complainant, The New Albany Company of Indiana, may not be entitled to a decree canceling the guaranty as against it and granting an injunction to prevent suits against it in Indiana. The jurisdiction in equity of the bill rested on two grounds, one, the multiplicity of suits threatened, and the other, the necessity for complete relief by cancellation. In view of the fact that the complainant is now shown not to be entitled to full cancellation or injunction against suits in Kentucky, we might, perhaps, dispose of the case at this point by ordering the bill to be dismissed without prejudice to the right to file a bill as to the Indiana suits in Indiana, because the exercise of equitable jurisdiction, founded on a multiplicity of suits threatened and on the necessity for cancellation of instruments, is somewhat a matter of judicial discretion and dependent on the particular circumstances of each case.

Town of Springport *v.* Teutonia Savings Bank, 75 N. Y. 397.
Town of Venice *v.* Woodruff, 62 N. Y. 462, 267.
Tuller *v.* Percival, 126 Mass. 281.
Hamilton *v.* Cummings, 1 Johns. Ch. 517.
Smith *v.* Smith's Adm'r, 30 N. J. Eq. 564.
Story's Eq. Juris., sec. 393.
Beach's Modern Equity, sec. 553 *et seq.*

While the course suggested would, perhaps, be an easier mode of ending the present suit, we think it to be our duty, as it certainly is within our jurisdiction, to proceed to dispose of all of the questions arising upon the record and make an end, so far as we may, of this litigation, which must have been burdensome to all parties.

It is very clear that every one accepting the guaranty was charged with knowledge that by the Indiana act of 1883 the board of directors of the New Albany Company of Indiana had no authority to bind the company by such a guaranty unless a petition for the same had been filed with the board.

Pearce *v.* M. & I. R. R. Co., 21 How. 441.

Hence it follows that one who knew that no such petition had been filed with the board must have known that the guaranty was not binding on the Indiana corporation and could not hold it to any liability on the same.

It has been argued at the bar that the Indiana act of 1883 does not apply to the guaranty here in controversy. It is said that under the power conferred upon the complainant company by section 3951 of the Indiana Revised Statutes, "to purchase or contract for the use and enjoyment in whole or in part of any railroad or railroads
214 lying within adjoining States" and to "assume such of the debts and liabilities of such corporation as may be deemed proper," the company had the right to buy the controlling interest in the Beattyville Company and contingently to assume the payment of its bonds as a consideration for the purchase, and that nothing in the act of 1883 subsequently passed was intended to restrict this power. It may be that the power to purchase the stock and guarantee the bonds of the Beattyville Company can be found within the four corners of section 3951, but even if that be so, which we do not decide, we are of opinion that the necessary effect of the act of 1883 was to require that thereafter where a guaranty was deemed a proper means in the exercise of the power conferred by section 3951, it could only be used with the consent of a majority of the stockholders. Of this view was the circuit court, and we concur therein.

Unless, therefore, the appellants are *bona fide* purchasers of these guaranteed bonds without notice of the defect in the guaranty, due to the absence of a petition for the same by the stockholders, they have no cause of action against the New Albany Company of Indiana. Upon whom is the burden in this case, in respect to the issues of *bona fides* and want of notice need not be now discussed? It suffices here to say that no matter what the rule in this regard, all but two of the appellants are indisputably shown by the record to have purchased the guaranteed bonds in good faith without any notice of the defect in the guaranty. We proceed, therefore, to consider the case of such *bona fide* purchasers, reserving until the close of the opinion a discussion of the question of notice to the two other appellants referred to. It is contended by the counsel for the appellee and it was held by the circuit court that the guaranty without the stockholders' petition was void, because clearly beyond the power of the company. The principles of law and the distinctions which apply in considering the defense of *ultra vires* set up by a corporation are now so clearly laid down in cases decided in the Supreme Court of the United States and in the House of Lords and the courts of appeal in England that there is no difficulty in their application

except where doubt arises over the construction to be placed upon particular and ambiguous words of the statute or the instrument conferring and limiting the powers of the corporation. In the Central Transportation Company *v.* Pullman's Palace Car, 139 U. S., Mr. Justice Gray, in delivering the opinion of the Supreme Court, examined all the leading cases in that court and in England and stated their result as follows:

"The charter of a corporation, read in the light of any general laws which are applicable, is the measure of its powers, and the enumeration of those powers implies the exclusion of all others not fairly incidental. All contracts made by a corporation beyond the scope of those powers were unlawful and void, and no action can be maintained upon them in the courts, and this upon three grounds, the obligation of every one contracting with a corporation to take notice of the legal limits of its powers: the interest of the stockholders not to be subjected to risks which they have never undertaken, and above all the interest of the public that the corporation shall not transcend the powers conferred upon it by law."

By application of this principle, the learned judge in the lower court reached the conclusion that the guaranty here in question was void. We think the principle was misapplied. The general
215 scope of the powers conferred upon the New Albany Company, included the power to make guaranties like this. The consent of the stockholders was a mere regulation of the mode of exercising the power. The same learned justice whose language we have quoted above from Central Transportation Co. *v.* Pullman Palace Car Co., *supra*, delivered the opinion of the supreme judicial court of Massachusetts in another leading case upon the subject of *ultra vires* contracts of corporations (Davis *v.* The Old Colony R. R., 131 Mass. 258), and enunciated the same conclusion as that above given; but in the course of the opinion he said (p. 260): "There is a clear distinction, as was pointed out by Mr. Justice Campbell in Zabriskie *v.* Cleveland, Col. & Cin. R. R., 23 How. 381, 389, by Mr. Justice Hoar in Monument Bank *v.* Globe Works, 101 Mass. 57 and 58, and by Lord Chancellor Cairns and Lord Hatherly in Ashbury R'y Carriage & Iron Co. *v.* Roche, L. R. 7 H. L. 668, 684, between the exercise of a power not conferred upon it, varying from the objects of its creation as declared in the law of its organization, of which all persons dealing with it are bound to take notice; and the abuse of a general power, or the failure to comply with prescribed formalities or regulations, in particular instance when such abuse or failure is not known to the other contracting party." We do not doubt that the guaranty without a petition of the stockholders here was of the latter class, and that it was not, to use the language of Lord Cairns above cited, "anything more than an act *extra vires* the directors but *intra vires* the company."

Of course, the point under discussion turns on the construction of the statute. The first and most important section provides that the board of directors of any Indiana railway company, whose line extends across the State, may, upon the petition of the holders of a majority of its stock, direct the execution by such railway company

of an indorsement guaranteeing the payment of the bonds of the railway company of an adjoining State, the construction of whose line of railway would be beneficial to the business or traffic of the railway so indorsing or guaranteeing such bonds. The next section provides that the petition shall state the facts showing the benefits to be derived from the guaranty, and the final section limits the power of guaranty by limiting the liability which may be thus incurred to an amount equal to one-half of the capital stock of the guaranteeing company.

The requirement that in the exercise of the power of guaranty, the initiative should be taken by the stockholders by petition was a regulation of the internal management of the corporation for the benefit and protection of the stockholders, and a statutory division of power between them and the directors, but it was not a limitation upon the power of the corporation in the sense that a guaranty without such a petition would be a violation of the corporation's charter rights justifying an ouster from them by *quo warranto*. If it were the latter, then the corporation having by its directors made such a guaranty without a petition could never be estopped to deny its validity, however completely the stockholders might subsequently have acquiesced in the same by silence after knowledge. An act which is plainly in excess of the powers of a corporation cannot be made valid by the acquiescence of all the stockholders. If this power of guaranty had been given with respect to bonds of railway
216 corporations of Illinois and not of Kentucky, it is manifest that a guaranty of the bonds of a Kentucky company could never have been ratified even by a unanimous vote of the stockholders. The requirement for the petition contained in the Indiana act of 1883, however, could be waived by the stockholders by subsequent conduct. This is settled conclusively by the decision of the Supreme Court of the United States in Zabriskie *v.* The Cleveland, etc., Railroad Company, 23 How. 381. There a statute, which was construed by the court to confer upon an Ohio railway corporation the power to guaranty the bonds of an Indiana corporation, provided that the guaranty should not be entered into until a meeting of the stockholders of the company should be called and the holders of two-thirds of the stock should have assented thereto. It was conceded by the court that the meeting and vote, though attempted, had not been had in accordance with the statute, but it was held notwithstanding that the stockholders by their subsequent silence and failure to object for several years had estopped themselves and the corporation from asserting that the condition of the statute had not been complied with. The manifest sequence is that the provision for a stockholders' meeting was alone for the benefit of the stockholders, and that the State and the public had no interest to enforce it if those for whose protection it had been enacted were willing to let its violation go unchallenged. Referring to the same proviso as that considered in the Zabriskie case the supreme court of New York, in The Connecticut Mutual Life Ins. Co. *v.* Cleveland, etc., R. R. Co., 41 Barb. 9–24, said that "these provisos

were intended for the protection of the shareholders, and relate rather to the mode or manner of the execution of the power."

This view of the purpose and effect of such a provision is enforced by the construction put by the Supreme Court of the United States on a statute of Illinois much more emphatic and prohibitory in form than that here in controversy in St. Louis R. R. Co. *v.* Terre Haute R. R., 145 U. S. 393. The act there provided that it should not be lawful for a railroad company of Illinois to lease a railroad in another State without having first obtained the written consent of all the stockholders of said roads residing in the State of Illinois, and any contract for such lease made without having first obtained said written consent should be null and void. Of this the Supreme Court, speaking by Mr. Justice Gray, said: "Although this statute in terms declares that any such lease, made without the written consent of the Illinois stockholders, 'shall be null and void,' it would seem to have been enacted for the protection of such stockholders alone and intended to be availed of by them only. It did not limit the scope of the powers conferred upon the corporation by law, an excess of which could not be satisfied by estoppel; but only prescribed regulations as to the manner of exercising corporate powers, compliance with which the stockholders might waive, or the corporation might be estopped, by lapse of time or otherwise, to deny." Mr. Justice Harlan, at the circuit, took the same view of a similar statute in Hervey *v.* Midland R'y Co., 28 Fed. Rep. 169, 174. In Beecher *v.* The Marquette, etc., Pac. Rolling Mill Co., 45 Mich. 103, Justice Cooley, speaking for the supreme court of Michigan of a similar provision, said (174): "The statute now under consideration was passed to protect the interests of stockholders in mining companies. It intends that their mining property shall not be conveyed away or mortgaged except by their deliberate action after they have been notified of a proposal to do so, and have had time to deliberate upon and fully consider it. But the matter does not concern the public at large; no principle of public policy is at stake, no wrong direct or indirect is done to any human being if conveyance is made or mortgage given without the exact notice required unless it be a wrong to the stockholders themselves. And as others are not concerned, why should the statute give them the right to raise questions of regularity which the stockholders elect to waive. We are satisfied such was not its purpose." In Thomas *v.* The Citizens' Horse Railway Co., 104 Ill. 462–467, the supreme court of Illinois said of a like statute that it "was no doubt passed for the protection of stockholders. It is a matter in which the public have no interest." There are but two cases which we have found that may possibly support a different theory. In Commonwealth *v.* Smith, 10 Allen, 448, the Commonwealth of Massachusetts held a first mortgage and two subsequent mortgages on the Troy & Greenfield railroad. After the first mortgage, the company made a mortgage to secure bonds amounting to $600,000 as a second mortgage. The bonds were sold in the market to private persons. This was a bill by the Commonwealth, as the holder of the two subsequent

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mortgages, to have the second mortgage declared void. The statute authorized the issue of bonds, and a mortgage "provided however that such corporation shall by a majority of votes at a meeting of its stockholders called for that purpose be authorized to issue the same and provided that the bonds so issued shall in no case exceed the amount of capital actually paid in by the stockholders of said company." The capital stock paid in was only $143,000. The statute provided for bonds running twenty years, and the bonds in question ran thirty years. After deciding that the railroad company had no common-law power to mortgage its property, the court held that the statute prescribed the conditions on which bonds and a mortgage could be issued, and that if they did not conform they were made in violation of law and were therefore void; and that these bonds and mortgages were void because they were in excess of the capital stock paid in and ran for thirty years. Said the court, "The legislature did not mean that such bonds should be made. The illegality is apparent upon their face and open equally to the knowledge of the party who issued and the party who received." The language of the court certainly implies that corporate power to mortgage did not exist in the absence of the assenting meeting of the stockholders, but its weight as authority is much affected by the fact that the case before the court did not call for an expression of opinion on that point. More than this, the court was dealing with a case where the bondholders were advised of the departure from the statutory requirements, and it was therefore hardly necessary to make any distinction between acts which were *ultra vires* the corporation and those which were only *ultra vires* the directors. The case of The Commercial Bank of Canada *v.* The Great Western R'y Co. of Canada, 3 Moore's Privy Council Cases N. S. 295, may also perhaps be classed as an authority in conflict with the cases first above cited. As we shall have occasion to discuss this case at some length hereafter in its relation to another but closely
218 allied principle of law, we pass it now with the remark that it is in conflict with the weight of authority in this country and especially with the language of the Supreme Court of the United States, St. Louis R. R. Co. *v.* Terre Haute R. R. Co., 145 U. S. 393, above quoted, which has, of course, controlling weight with us.

It has been pressed upon us in this court, and was considered worthy of weight by the learned judge in the court below, that without the statute containing the requirement for a petition, the company would have had no power to make a guaranty at all, and that the condition must, therefore, be regarded as a limitation upon the power rather than a mere internal regulation for the protection of stockholders. The distinction is too fine for practical application. Whether the power exists by implication before the statute or not, the statute is intended, after its passage, to be the only source of the power, and if the act imposes conditions or limitations on its exercise, they are as mandatory in the case of a power before implied as in that of one newly created. In the case of The St. Louis R. R. *v.* Terre Haute R. R., 145 U. S. 393, 402, already quoted, the

powers affected by the statute there construed were those of consolidation and lease, neither of which can exist without an express statutory source.

In England joint-stock companies are formed under general laws, and the incorporators are required to execute and file or register in a public office an instrument in some acts called the deed of settlement, in others, the memorandum and articles of association. Their effect is quite like the charter and articles of incorporation in this country, and the public are charged with notice of their contents. It is not an infrequent provision in the deed of settlement or the articles that certain powers shall not be exercised by the board of directors until the assent of the shareholders at a general meeting has been procured. It is usually held by the courts of England that such a requirement is a preliminary formality or regulation of the internal management of the company, the absence of *of* which does not render the exercise of the power absolutely void and incapable of ratification when relied on by one without notice of the defect.

Royal British *v.* Turquand, 6 E. & B. 327.
Agar *v.* Life Assurance Society, 3 C. B. N. S. 721.
Fountaine *v.* Carmathen R'y Co., L. R. 5 Eq. 316.
The Colonial Bank of Australasia *v.* Willan, L. R. 5 Privy Council Appeals, 417, 448.
Irvine *v.* Union Bank of Australasia, 2 Appeal Cases, 366.
In re Tyson Reef Co., 3 Wyatt, Webb & A'Beckett (Victoria Rep.) Law 162.

The case of The Commercial Bank of Canada *v.* The Great Western Railway of Canada, 3 Moore's Privy Council Cases, N. S. 295, already alluded to, is the only case taking a different view.

As it thus appears that the defect in the guaranty does not make it a clear and palpable excess of the charter power of the company and void, but only an abuse of a general power or a breach of a regulation for its exercise, its binding character depends on the knowledge, express or implied, which the holder of the guaranty had of the defect when he advanced money or thing of value
219 on the faith of it. Eastern Counties Railway Company *v.* Hawkes, 5 H. L. C. 331, per Lord Campbell *in arguendo*, page 338, and Lord St. Leonards, page 373; Davis *v.* Old Colony Railroad, 131 Mass. 258, 260. He is of course charged with full knowledge of everything in the statute or charter incorporating the company, whether it relates to the general powers of the company or to the mode and manner of their exercise, or to the authority of the directors or the officers or any matter of internal management therein set forth. And this applies as well to the articles and memorandum of association or the deed of settlement of an English joint company as to the statute, charter and articles of incorporation of a corporation of this country.

Ernest *v.* Nicholls, 6 H. L. C. 418.
Pearce *v.* Madison R'y Co., 21 How. 441.

If, therefore, by comparing the written evidence of corporate action, which is made the basis of a claim against the corporation, with the publicly recorded evidence of its powers and manner of exercising them, it can be seen that the act is a departure in any substantial respect from the requirements set forth therein, that which purported to be a contract is not binding as such upon the corporation. But the case is very different when the act in question upon which it is sought to base corporate liability seems to be within the corporate powers and the required mode of exercising them, and yet in fact is for a purpose not warranted by the charter, or is defective because of a failure to comply with some regulation upon which the authority of those acting for the corporation is made by the charter to depend. In the first class of cases, to wit: when the act is on its face within the power of the corporation, those who, in dealing with the corporation, advance money or change their position on the faith of the validity of the act without notice of anything to the contrary may hold the corporation, however *ultra vires* the purpose of the act may in fact have been. Thus it was held by the House of Lords in Eastern Counties R'y Co. *v.* Hawkes, 5 H. L. C. 331, that a railway corporation which had entered into a contract to buy land for use in building its line would not be heard to say in defense to an action for specific performance that it needed only a very small part of the tract for its line and therefore had no power to acquire the rest, when it appeared that the owner of the land had no reason to suppose that the company was not about to use the land for legitimate corporate purposes. The same principle is illustrated in cases where a corporation with power to issue negotiable paper in its business issues it for an *ultra vires* purpose, as, for instance, for the accommodation of another. If the paper in such a case reaches the hands of a *bona fide* purchaser for value, without notice of its illegal purpose, the corporation is liable thereon and cannot show the real purpose of its issue to escape payment.

Farmers' National Bank *v.* Sutton Mfg. Co., 6 U. S. App. 312.

Monument Bank *v.* Globe Works, 101 Mass. 57.

Madison & Indianapolis R. R. Co. *v.* Norwich Savings Society, 24 Ind. 457.

National Bank of the Republic *v.* Young, 41 N. J. Eq. 531.

Stouey *v.* American Ins. Co., 11 Paige, 635.

220 Credit Company *v.* Home Machine Co., 54 Conn. 358.

Peruvian Railway Co. *v.* Insurance Co., L. R., 2 Ch. 617.

Webb *v.* The Commissioners of Herne Bay, L. R. 5 Q. B. 642.

The principle of these cases is that where a corporation does an act which has the appearance of one within its charter powers, the public without notice to the contrary, in dealing with the corporation has the right conclusively to presume that the act is valid and to proceed on that presumption.

The case at bar, however, comes under the second class of cases above referred to, where a seeming act of the corporation is defect-

ive because of a failure to comply with some preliminary condition, upon which the authority of those acting for the corporation is made by the charter to depend, and the question we have before us is whether one of the public dealing with the corporation in such a case has a right, in the absence of notice to the contrary, to presume that the condition has been complied with, and, in case he advances money on the faith of it, to hold the corporation in spite of the defect. The discussion involves a branch of the law of agency. In some jurisdictions, especially in the courts of New York, it is laid down that in every case where a principal has clothed his agent with power to do an act upon the existence of some extrinsic fact necessarily and peculiarly within the knowledge of the agent, and of the existence of which the act of executing the power is itself a representation, a third person dealing with such agent in entire good faith, pursuant to the apparent power, may rely upon the representation, and the principal is estopped from denying its truth to his prejudice.

North River Bank *v.* Aymar, 3 Hill, 262.
Griswold *v.* Haven, 25 N. Y. 595.
New York & New Haven R. R. Co. *v.* Schuyler, 34 N. Y. 30.

And so it was held in Bank of Batavia *v.* New York R. R. Co., 106 N. Y. 195, that a bill of lading fraudulently issued by an agent of a railroad company without receiving the goods rendered the company liable to one advancing money on the faith of its validity and without notice of the defect. The Supreme Court of the United States has refused to carry the principle thus far, and holds that the agent's authority to issue bills of lading depends on the receipt of the goods, and that the bill of lading issued without receiving the goods is void into whosesoever hands it may come. The reason given for this ruling is that a bill of lading is a mere non-negotiable contract to carry goods, and that no subsequent holder has any better standing to enforce it than the first one receiving it, who must have known that goods were not received.

Friedlander *v.* Texas, etc., R'y Co., 130 U. S. 416.
Pollard *v.* Vinton, 105 U. S. 7.
Missouri Pacific *v.* McFadden, 154 U. S. 155.
Iron Mountain R'y Co. *v.* Knight, 122 U. S. 79.
The Lady Franklin, 8 Wall. 325.
The Delaware, 14 Wall. 579.
Schooner Freeman *v.* Buckingham, 18 How. 182.

221 But in the Friedlander case there is a plain intimation that the decision would not be applicable in the case of a negotiable instrument, for Chief Justice Fuller, in delivering the opinion of the court, says on page 423, "Bills of exchange and promissory notes are representatives of money, circulating in the commercial world as such, and it is essential, to enable them to perform their peculiar functions, that he who purchases them should not be bound to look beyond the instrument, and that his right to enforce them should not be defeated by anything short of bad faith

on his part. But bills of lading answer a different purpose, and perform different functions." And in The Merchants' Bank *v.* The State Bank, 10 Wall. 604, the Supreme Court adopts the principle of the New York courts, stated above, as applicable at least to negotiable paper issued in the name of a corporation by one of its officers, whose authority was defective in fact, but not apparently so.

In the case at bar, the statute of 1893 authorized the board of directors to indorse the guaranty on the bonds of another railway. Now that guaranty was as negotiable as the bonds which bore it. There has been in the books an irreconcilable conflict over the question whether a guaranty on a promissory note signed by the payee has the same effect to transfer the note as an indorsement (Brandt on Suretyship and Guaranty, vol. 1, sec. 47; Daniel on Negotiable Instruments, 2, XXI vol., 1776, 1777), and it is settled in the courts of the United States that such a guaranty of a promissory note is not a negotiation of it by the law merchant.

Trust Co. *v.* National Bank, 101 U. S. 68.

But the question here is a very different one. The bonds here were payable to bearer, and needed no indorsement, according to the law merchant, to pass title. Title to them passed by delivery. The contract of guaranty was made in terms with the holder of the bond. As the bond passed from one to another, a new contract of guaranty arose between the guarantor and each successive holder, just as the obligor of the bond assumed a new contract relation with the same person, and every such contract was wholly unaffected by equities unknown to the then holder which might have arisen between either the obligor or the guarantor and previous holders. If, as is held by the Supreme Court of the United States in Carpenter *v.* Longan, 16 Wall. 271, a mortgage securing the payment of a negotiable instrument is not any more subject to equitable defenses than the note of which it is the incident, it would seem, *a fortiori*, that a guarantee indorsed on a negotiable bond payable to bearer must, by its relation to the principal obligation, acquire the same attribute of negotiability. The language of Mr. Justice Campbell in Zabriskie *v.* The Cleveland, etc., R. R. Co., 23 How. 381, leaves little doubt that such guaranties, like the bonds, rightly challenge confidence wherever they go and partake of the same quality of negotiability. This conclusion is also in accord with the spirit of the decision of the Supreme Court in Railroad Co. *v.* Schutte, 103 U. S. 118. See also Ketchall *v.* Burns, 24 Wend. 456; Toppan *v.* Cleveland, etc., R. R. Co., 24 Fed. Cases, 56.

The Kentucky statutes (General Statutes, chap. 22, secs. 6, 13, 14), with respect to the negotiability and assignability of bonds and promissory notes, have no application to bonds like these
222 payable to bearer. They apply only when an assignment is necessary to pass the title to the chose in action. There is a close analogy in this regard between the proper construction of the Kentucky statutes referred to and that of the section of the Federal statutes restricting the jurisdiction of the circuit courts in suits to

enforce choses in action brought by the assignee of the original obligee.

City of Lexington *v.* Butler, 14 Wall. 382.

It is often said in cases of this general character that until the agency to make the instrument is established it is immaterial whether it is negotiable or not. While this is true in one sense, in another it ignores a palpable distinction to be observed in cases of agency by estoppel, which rest rather on the appearance of authority than upon actual authority. Where an agent is an agent to issue negotiable paper of any kind or under any circumstances, his appearance of authority is greater than where he can make only non-negotiable contracts. His signature to a negotiable instrument if valid in any class of cases has the appearance of validity in all, because negotiable instruments rarely disclose their purpose, and are adapted to be a circulating medium between many. It is to be inferred, therefore, where a principal gives to an agent authority to put in circulation negotiable paper in a certain class of cases, he knows he is giving his agent an appearance of authority in any case in which the latter may issue paper, whether authorized or not, and that he runs the risk of loss by such abuse of authority should it induce an innocent third person to advance money on his unauthorized paper. The statute of Indiana should bear the same construction as the act of the principal in the case supposed. Therefore, when the legislature of Indiana vested the directors with power to place a negotiable guaranty on negotiable bonds, liable to circulate from hand to hand in the markets of the world and challenging confidence wherever they should go, can we suppose that it intended every purchaser to satisfy himself by personal inspection of the records of the corporation or otherwise, that a petition by stockholders had preceded the directors' action? Mr. Justice Brewer said, in Blair *v.* The St. Louis, H. and K. R. R. Co., 25 Fed. Rep., 684: "I do not understand that a man dealing with a private corporation, or even a quasi-public corporation like a railroad, is bound to take notice of what the records of that corporation show, for if it be so, no man can deal with a corporation in safety without first having access to, and an examination of, its books, and the converse of that would be true, that such a corporation is bound to show its records to whomever has dealings with it." If the legislature had intended the public to advise itself of the filing of the stockholders' petition, it would have provided for some public record of it. Irvine *v.* Union Bank of Australia, L. R. 2 Ap. Cases, 366. As the directors are usually the corporation's representatives in its dealings with the public, is it not reasonable to infer that the legislature intended the restriction to operate as between the stockholders and directors, and not to defeat the claims of those parting with money on the faith of the validity of the directors' action? The fact that the guaranty was to be negotiable suggested the necessity that the contract should carry on its face indisputable evidence of validity, and t[illegible]s object would be seriously impaired if

the public were compelled to act at their peril on
223 the implied assurance of those in whom the power to guarantee was vested, that the essential preliminary of a stockholders' petition had been complied with. It is a mistake to suppose that such a construction of the statute destroys the protection of the act to stockholders. They may enjoin the directors from guarantees without their consent, and they may hold the directors personally liable for unauthorized action. They have a much better opportunity to observe their directors and keep them within the restriction of the statute than have outsiders to learn whether the restriction has been violated. We think this a case for the application of the principle above stated, which may properly be called the New York rule of agency, that where an agent is clothed with authority to act for his principal upon the happening of an extrinsic fact, peculiarly within the knowledge of the agent, and not known to the public, or within its usual means of knowledge, his acting is an implied representation, binding on his principal, to those dealing in good faith with him as agent, that the extrinsic fact exists upon which his authority depends.

The guaranty bore the seal of the corporation affixed by its secretary and the signature of the corporation by its president. *Prima facie*, these imported corporate action. Koehler *v.* The Black River Falls Iron Company, 2 Black. 717. They raised the presumption that the guaranty had been ordered to be made by the board of directors. This was the fact. The case, then, is as if the purchaser of each bond knew that the resolution of the board had been passed and the only question is whether with that knowledge he had a right conclusively to presume that a petition of stockholders had been filed. On the law of agency applicable to agents authorized to issue negotiable paper, we think, for the reasons stated that he was.

We are, however, not compelled to rest alone on general rules of the law of agency applying to the issuance of negotiable paper, for the case at bar falls within a class of cases having sole application to the transactions of corporations and not confined to negotiable instruments. By reason of the peculiar organization and limited membership liability permitted by the law to such artificial persons of its own creation, public policy often clothes those who represent corporations in dealing with the public with a greater apparent authority than the charter rules for the internal management of the corporation really give them, and puts upon the members of the corporation the burden of preserving the limitations of their agents' authority in transactions with an outsider who has no opportunity or reason for knowing whether the limitations have been violated. The maxim "*Omnia præsumuntur rite et solemniter esse acta, donec probetur in contrarium,*" is applicable to everything done by a corporate officer (United States Bank *v.* Dandridge, 12 Wheaton, 63, 70), and when, in a certain class of cases, one, in good faith, has advanced value on the faith of the presumption, it is not permitted to the corporation to prove the contrary. The class of cases is where the act in question is that of one representing the corporation as a general

agent whose authority depends on compliance by himself or other members or agents of the corporation with preliminary regulations. In cases of this class the presumption of regularity against the corporation is conclusive. The rule is founded chiefly on the very limited opportunity of the public to know with certainty the
224 circumstances of the internal management of a corporation. It has been frequently applied to a corporate regulation like that in the case at bar, imposing as a condition precedent to the authority of directors in a given matter a vote by the stockholders.

The leading case upon this point is Royal British Bank *v.* Turquand, 6 Blackburn & Ellis, 327. In that case the declaration was on a bond of a railway company of which the defendant was official manager. It was signed by two directors under the common seal. The plea was, that by the 50th section of its deed of settlement it was provided that the board of directors might borrow on bond, in the name and under the seal of the company, such sum as should by a resolution passed at a general meeting of the company be authorized to be borrowed, and that no such resolution had been passed and that the bond had been given without the authority of the shareholders of the company. On demurrer the plea was held bad, first in the Queen's Bench, Lord Campbell presiding, and then on error in the exchequer chamber, where Jervis, chief justice, delivered the only judgment, and it is so short that it may be quoted in full. He said:

"We may now take for granted that the dealings with these companies are not like dealings with other partnerships, and that the parties dealing with them are bound to read the statute and the deed of settlement. But they are not bound to do more, and the party here reading the deed of settlement would find, not a prohibition from borrowing, but a permission to do so on certain conditions. Finding that the authority might be made complete by a resolution, he would have a right to infer the fact of a resolution authorizing that which on the face of the document appeared to be legitimately done."

In this judgment Pollock, C. B., Alderson, B., Creswell, J., Crowder, J., and Bramwell, B., concurred. The case has been strongly approved in the House of Lords in the Irish case of Mahony *v.* East Holyford Mining Co., L. R. 7 H. L. 869. See the opinion of the judges delivered by Chief Baron Kelly and the judgments of Lords Hatherly and Penzance. It has been followed in England in quite a number of cases where the required assent of shareholders was actually wanting to a corporate act of the directors apparently in due form. Such are Agar *v.* Life Assurance Society, 3 C. B. N. S. 721; Fountaine *v.* Carmathen R'y Co., L. R. 5 Eq. 316; The Colonial Bank of Australasia *v.* Willan, L. R., 5 Privy Council Appeals, 417, 448; *In re* Tyson Reef Co., 3 Wyatt, Webb & A'Beckett (Victoria Reports Law) 162. The principle is approved in many other cases. See Prince of Wales *v.* Harding, E. B. & E. 181. *In re* Athenæum Society, 4 K. & J. 549; *In re* Land Credit Co., L. R. 4 Ch. 460; *In re* County Life Assurance Co., L. R. 5 Ch. 288; County of Gloucester Bank *v.* Rudry Merthye Colliery Co. (1895), 1 Ch. 629.

It has been urged by way of *reductio ad absurdum* that the same reasoning which raises a conclusive presumption of regularity in favor of a stranger advancing money on the faith of action by the directors would require that the presumption arising from the affixing of the seal by the secretary and the signature of the corporation by the president that the board of directors ordered them upon due authority received from the stockholders, should be equally conclusive. It is not necessary for us to decide the question suggested until it arises.

It will suffice to point out the manifest distinction between
225 such a case and the one under discussion. The secretary and the president, in affixing the seal and signature, are mere ministerial officers. They have no discretion to exercise in the matter of a guaranty. They are the mere subagents of the corporation, the fingers of the board of directors, so to speak in this matter, and it would seem that in a case in which not only the action of the directors is necessary, but that of the stockholders is also required, the unauthorized use of the seal by the secretary, or of the name of the company by the president to give appearance of validity to a pretended guaranty would be as far short of binding the company as a forgery. The distinction is referred to by Lord Hatherly in Mahony *v.* East Holyford Mining Company, L. R. & H. L. 869, 899, in pointing out that the case of Bank of Ireland *v.* Evans Charity, 5 H. L. Cas. 389, was not in conflict with the rule established by Royal British Bank *v.* Turquand. There are three cases in the English books where a resolution of shareholders necessary to the directors' authority was absent and the principle of Bank *v.* Turquand was not applied. The earliest of these is Ernest *v.* Nicholls, 6 H. L. Cases, 400. It was decided in the House of Lords after the decision of British Bank *v.* Turquand in the Court of Queen's Bench and before its decision in the exchequer chamber. The suit was by the official representative of one defunct insurance company against that of another to compel the latter to pay the amount due on a policy of life insurance in accordance with an indenture properly executed by the requisite number of directors of the two companies. The deed contained a covenant by the defendant company that in consideration of the transfer to it by the deed of all the trade and good will of the plaintiff company it would assume and pay all the policies of the plaintiff company then outstanding. Each company had the requisite statutory power to make the deed. The 29th section of 7 and 8 Vict. C. 110, regulating the management of such companies, provided, however, that when any director was interested adversely to the company in any contract entered into by the company, "then the terms of such contract or dealing shall be submitted to the next general meeting of the shareholders to be summoned for that purpose, and no such contract shall have force until approved and confirmed by a majority of votes of the shareholders present at such meeting." It appeared from the registered deeds of settlement that one Collingridge was the managing director of one company and a director in the other, and that the making of the transfer and its terms was entirely his work, representing both sides.

He signed the deed for the plaintiff company. The House of Lords held that the deed was void under section 29, because it appeared in the evidence that no general meeting was held in accordance therewith. Lord Wensleydale, in giving judgment, said (page 418), referring to the board of directors: "The stipulations of the deed which restrict and regulate their authority are obligatory on those who deal with the company; and the directors can make no contract so as to bind the whole body of shareholders, for whose protection the rules are made, unless they are strictly complied with. The contract binds the person making it, but no one else." This language, though delivered in the House of Lords by a judge of the greatest eminence (Baron Parke) and a law lord, was very soon distinctly repudiated as authority
226 by the courts of Queen's Bench and common pleas as extrajudicial and not necessary to the decision. Prince of Wales *v.* Harding, E. B. & E. 181; Agar *v.* Life Assurance Society, 3 C. B. N. S. 721, and the criticism thus made has been acquiesced in ever since. In commenting on the decision, Lord Campbell, in Prince of Wales *v.* Harding, says: "We are, of course, bound by the judgment of the House of Lords in that case; and we should all most heartily have concurred in it, the question having been as to a special contract to do the very unusual thing of purchasing by one company the trade of another. But we are not bound by the extrajudicial observations of any noble and learned lord, delivered in that assembly, although they are, no doubt, entitled to high consideration." Now it must be conceded that, in this language of Lord Campbell, there is color for the suggestion that the rule laid down in Bank *v.* Turquand, and followed in the case he was then deciding, applied only to the exercise of those powers usually exercised by corporations, like that of borrowing, and not to extraordinary powers, like that which was attempted to be exercised in Ernest *v.* Nicholls, and it may seem to support a suggestion of the same distinction between the Turquand case and the case at bar on the theory that a guaranty of railroad bonds is quite as unusual a transaction as the sale and purchase of the trade and good will of an insurance company. The distinction, however, is never again alluded to in the long line of cases in which Bank *v.* Turquand is followed. The real and palpable difference between Ernest *v.* Nicholls and Bank *v.* Turquand is that in the former case the two companies were engaged in a transaction in which, to the knowledge of each, the agreement was being made and executed by one who was acting as agent for both, and by virtue of section 29 as well as of ordinary rules of human action, neither had a right to rely on the presumption of regularity in the conduct of a representative with such a divided allegiance. The next case is that of The Commercial Bank of Canada *v.* The Great Western R'y of Canada, 3 Moore's Privy Council Cases, N. S. 295, decided in 1865. In that case the action was brought by a bank against the Great Western R'y Co. to recover a large sum of money advanced to the latter and disbursed on its order to assist in the construction of a connecting line. The statute of Canada permitted the railway com-

pany to use its funds for this purpose "provided that no such expenditure shall be incurred unless sanctioned by a vote to that end of two-thirds of the shareholders specially called for the purpose." A meeting was held and authorized the advance of a certain sum considerably less than that subsequently advanced, and the question was in reference to the excess. The judicial committee of the privy council held that the bank could not recover. Lord Chelmsford delivered the judgment for himself and Lords Justices Turner and Knight-Bruce. He distinguishes the case from Bank *v.* Turquand as follows: "The words of the act are negative and prohibitory. 'No such expenditure shall be incurred unless by a vote to that end of two-thirds of the shareholders.'" The case differs in this respect from The Royal British Bank *v.* Turquand, for there the clause of the deed of settlement was an empowering clause, enabling the directors to borrow on bonds such sums as should, from time to time, by a general resolution of the company, be authorized to be borrowed, and this very
227 distinction was taken by Chief Justice Jervis in that case, for after observing that parties dealing with the bank were not bound to do more than read the statute and the deed of settlement, he adds: "And the party here, on reading the deed of settlement, would find, not a prohibition from borrowing, but a permission to do so on certain conditions." In a part of his judgment just preceding, reference is made by Lord Chelmsford to the extraordinary character of the power, as a reason why the bank should have examined the statute to learn the conditions of its exercise, but the only distinction attempted to be made between this case and Bank *v.* Turquand is as above. With deference to the high standing of the judges and the tribunal rendering this judgment, it is submitted that the distinction made is without a difference, and is a mere verbal nicety having no substantial foundation. But even if the distinction is tenable, the language in the case at bar is permissive on condition, as in the Turquand case, and is not prohibitory in form as in the Commercial Bank case. Nor can any distinction be logically founded on the so-called extraordinary character of the power. One dealing with the company is as much charged with exact knowledge of the conditions, if any, upon which usual powers are to be exercised as of those imposed in the exercise of unusual powers, because he is bound to read the statute and deed of settlement in either case. There is no suggestion in the judgment (and if there were it would have little reasonable foundation) that the board of directors of a corporation are any more likely to act without a compliance with preliminary regulations in the case of unusual powers than in the case of those more frequently exercised, or that the one who deals with a corporation has any better means of informing himself as to compliance in the one case than in the other.

It should be noted as a distinction between the cases of Ernest *v.* Nicholls and Commercial Bank of Canada *v.* Great Western Railway and the one at the bar that the instruments upon which liability was asserted in the former cases were not negotiable. It is

reasonable that the presumption of regularity should have more force in cases of instruments designed to pass from hand to hand as "couriers without luggage," than in the case of non-negotiable contracts. Webb *v.* Commissioners of Herne Bay, L. R. 5 Q. B. 642.

The doctrine of Bank *v.* Turquand is that the resolutions at meetings of stockholders are part of "the indoor management" of the corporation, as Lord Hatherly calls it in Mahony *v.* East Holyford Mining Co., L. R. 7 H. L. 869, 894 (see similar expressions by the same judge in Fountain *v.* Carmathen R'y Co., L. R. 5 Eq. 316, 322, and *In re* Athenæum, 4 Key & J. 549); and that the public cannot be expected to inform themselves of that of which the proper evidence is to be found only in the books and records of the company, to which they have no access. The history of the adoption of the rule is not difficult to trace. Joint-stock companies in England were nothing but special statutory partnerships endowed with corporate character. In partnerships every active or managing partner was the general agent for all, and his ostensible authority was not limited by special arrangements between the partners. When the liability of the statutory partnership was asserted by reason of the acts of the directors or managing partners, the disposition
228 of the courts of England was not to enlarge the limitations of responsibility conferred by the statute as an unusual privilege on the company, but to confine them to cases where the outsider dealing with the corporation through such managers had some convenient means of knowing that the limitations of the law had been transgressed. The whole doctrine grows out of the difference in the opportunity for knowing the facts between the shareholders and directors on the one hand, and the public dealing with the corporation on the other. The third English case involving the effect of a failure to pass a required resolution of stockholders upon the contract of a corporation in which the Bank *v.* Turquand was not applied, shows this in a neat way. The case is that of Irvine *v.* Union Bank of Australia, 2 Appeal Cases, 366. A company defended against an equitable mortgage on its property executed by its directors for an amount advanced by one creditor in excess of the amount allowed by its articles of association. The amount of allowed indebtedness under its articles might have been increased by a vote at a general meeting of stockholders. The contention was that the mortgagee had the right, according to Bank *v.* Turquand, to presume from the action of the directors that such a meeting had been held and the proper authority given. Answering this argument Sir Barnes Peacock, who delivered the judgment of the privy council, said (page 379):

"In the present case, however, the bank * * * must have known that if the general powers vested in the directors, by section 50, had been extended or enlarged by a resolution of a general meeting of the shareholders under the provisions of section 31, a copy of the resolution ought, in regular course, to have been forwarded to the register of joint-stock companies in pursuance of section 53, of the companies' act, and would have been found among his records. Their lordships are of opinion that the learned recorder was correct

in holding that this case is different from that of Royal British Bank *v.* Turquand."

Thus it appears that where, by law, any fact in the internal management of the company is required to be recorded in a public office, the presumption of regularity does not apply, and as to it, the outsider dealing with the company must advise himself. The same distinction, founded on the opportunity for knowledge or the contrary, is seen in those cases, where it is held that the requirement that a mortgage shall be registered in the books of the company avoids a mortgage unregistered in the hands of a director or stockholder. *Ex parte* Valpy & Chaplin, L. R. 7 Ch. App. 289; *In re* Native Ore Co., 2 Ch. D. 345; but does not affect the validity of such a security held by an outsider. *In re* Intern. Pulp Co., 6 Ch. D. 556; *In re* South American Co., 2 Ch. D. 337; *In re* Hercules Ins. Co., L. R. 19 Eq. 302; *In re* Gen. Peor Assur. Soc., 14 Eq. 507.

Coming now to the American cases, we may be very sure that the courts of this country have not laid down any more stringent rule against those dealing with corporations than the English courts, for it is well understood that on questions of corporate authority and transactions *ultra vires* the corporations or the directors, the judges of England have more strictly enforced the limitations of the charters of corporations against outsiders than have those of the United States. Monument Bank *v.* Globe Works, 101 Mass. 57, 58. There is but one case in which an American court has passed on the
229 exact question whether a resolution of a stockholders' meeting made essential by statute to the authority of directors could be presumed by an outsider from the action of the directors in due form. That is the case of Connecticut Mutual Life Ins. Co. *v.* Cleveland, etc., R. R. Co., 41 Barb. 9. It presented the same facts as those in Zabriskie against the same defendant, reported in 23 Howard at page 400. Bonds had been guaranteed by the directors without the authority required from the shareholders. The Supreme Court of the United States in its decision did not discuss the presumption that a purchaser of bonds might have indulged in respect to such a meeting from the mere act of the directors, but preferred to base its opinion on the subsequent ratification *in pais* by the stockholders. The supreme court of New York, however, put its conclusion on the former ground, saying:

"It is not necessary to inquire or decide whether acts of the defendant were authorized or ratified by a vote of the stockholders in accordance with the provisos of the said sections of the Ohio general statutes, if the defendant had the general power to make the guaranties; for these provisos were intended for the protection of the shareholders and relate rather to the mode or manner of the execution of the power; and the plaintiff had a right to presume that the defendant had done its duty and had proceeded regularly in the execution of the power."

And citing among other cases The Royal British Bank *v.* Turquand.

The authority of Royal British Bank *v.* Turquand has been invoked in many cases in this country involving the same principle

but not the same facts. In Commissioners of Knox County, Indiana, *v.* Aspinwal-, 21 How. 539, bonds issued by the county commissioners in payment of a railroad stock subscription and reciting a compliance with the statute were held good in the hands of *bona fide* purchasers, although the statutory condition of approval by popular election had not been fully complied with. It was said that the purchaser was not obliged to look beyond the assurance of the face of the bond for evidence of compliance with the necessary conditions. In support of this ruling Bank *v.* Turquand was cited, its facts stated and the judgment of Chief Justice Jervis quoted. Mr. Justice Nelson closed his reference to the case with the remark: "The principle we think sound and is entirely applicable to the question before us." Since this decision in the Aspinwall case the municipal bond cases in the Supreme Court have been legion, and distinctions have been drawn which were possibly not in the mind of the court at that time. It now appears to be settled that in such cases the city or county cannot be estopped to show irregularities in the issuance of the bonds unless there are express recitals of full compliance with statutory requirements, signed by an officer who has the implied or express authority by virtue of the statute to pass upon the question of compliance and to speak for the public corporation or quasi corporation issuing the same. See Mercer County *v.* Provident Life & Trust Company, 72 Fed. Rep. 623, 629, a decision of this court. The truth is that public policy requires a much stricter rule in favor of the debtor in respect of the liability of public municipal corporations on commercial paper than in the case of private corporations. Potter on Corporations, section 549. In the case of private corporations,
230 we do not understand that there is any necessity for recitals of due compliance on the face of their deeds, bonds and notes. The fact of issue in proper form is an implied representation of the fulfillment of preliminary conditions. Lord Campbell referred to the issuance of the bond in the Turquand case as a representation by the directors that the necessary meeting had been held. 5 E. & B. 248, 260. The facts in the Aspinwall case and the distinctions subsequently made between public and private corporate bonds perhaps prevent it from being an authority in the case at bar, but the emphatic approval of the Turquand case is useful as showing that it is concurred in by the tribunal whose views are controlling with us. The Turquand case is also referred to by the Supreme Court as authority in Merchants' Bank *v.* State Bank, 10 Wall. 604, 645.

We may also cite a few cases in the State courts in which Bank *v.* Turquand has been followed. In Hackensack Water Co. *v.* Dekay, 36 N. J. Eq. 548, a water company had no power to organize as such until $20,000 of its $100,000 of stock had been paid in, and no power to issue bonds and a mortgage in excess of two-thirds of the paid-in stock. It organized in spite of the limitations when only $2,000 was paid in and its directors at once ordered the execution of the bonds and mortgage under the name and seal of the corporation to the amount of $66,500. The mortgage and bonds

were duly executed and sold. It was held by the court of errors and appeals of New Jersey that the purchasers were entitled to presume from an inspection of the charter and the due and formal execution of the bonds and mortgage that all the stock had been paid in, that being a fact concerning the indoor management of the company which an outsider had no means of learning from any public record. Bank *v.* Turquand was relied upon as the chief authority to sustain this conclusion. A similar conclusion on similar facts was reached in Manufacturing Co. *v.* Canney, 54 N. H. 295. In Miller *v.* Insurance Company, 92 Tenn. 167, a company was organized to insure against accidents in traveling. By a subsequent act such companies were given authority, if the amendment was accepted by a vote of the stockholders, to issue policies of insurance against accidents from any cause or from death by disease. Without action by the stockholders, policies were issued by the directors covering the additional risks. It was held by the supreme court of Tennessee, Chief Justice Lurton delivering the opinion, that, on the authority of Bank *v.* Turquand the policy-holder had the right to presume, from the act of the directors, that the new amendment had been accepted by the stockholders. In Miners' Ditch Company *v.* Zellerbach, 37 Cal. 543, the action was by a ditch company to recover back all its property conveyed by deed of its trustees, from one to whom it had come by mesne conveyance. The ground urged was that such a deed was *ultra vires* and was not authorized by a resolution of the board of trustees. The court held, Sawyer, chief justice, delivering the opinion, that inasmuch as the deed might have been *intra vires*, the innocent purchaser was entitled to presume that it was; and, second, that from the seal and the signatures of the trustees he was entitled to presume that it was executed by order of a resolution of the board. The opinion of Chief Justice Sawyer is a very full discussion of the doctrine of *ultra vires*,
231 of the different senses in which the term is used and of the extent to which its application may be affected by knowledge of the party dealing with the corporation and by presumptions of regularity.

From the principles established by the authorities quoted, we have no doubt in this case that *bona fide* purchasers of the Beattyville bonds with the guaranty of the New Albany Company indorsed thereon without notice of its defects were entitled to presume from the face of the guaranty under the name and the corporate seal of the company, and the signatures of the president and secretary, that it was executed by direction of the board of directors, as it in fact was, that they had acted with due authority received from the stockholders by petition as required and that the company cannot now show the fact to have been otherwise.

With respect to two appellants only, the question of notice arises. These are the Louisville Banking Company and the Kentucky National bank. The former claims to be the *bona fide* purchaser of 55 bonds without notice of any defect in the guaranty. With respect to ten of the bonds, the evidence fully sustains the claim. With respect to the 45 bonds, the fact appears to be that they were part

of two blocks of bonds received by the banking company as collateral for two loans made by it to the improvement company. The loans were for $25,000 each and were secured, one by 62 and the other by 63 Beattyville bonds, but the testimony does not show how the forty-five guaranteed bonds were apportioned to the two loans. The loans were made in May, 1890, after the March meeting of the stockholders of the New Albany Company, at which the action of the directors in making the guaranty had been repudiated. Theodore Harris was the president of the Louisville Banking Company and of the Louisville Southern railway. He was in attendance upon the March meeting of the New Albany stockholders to learn what the new management intended to do in respect to the Louisville Southern lease, and made a speech to the stockholders, and he, in effect, admits that he then heard of the repudiation by the stockholders of the Beattyville guaranty as unauthorized. It is not distinctly proven, but the evidence of Mr. Harris seems to indicate that he acted for the bank in making the loans on the 125 Beattyville bonds in May. It is quite clear that at that time he knew that the stockholders of the New Albany Company had not assented to the guaranty. Under these circumstances we think that the bank was affected by his knowledge.

The Distilled Spirits, 11 Wall. 356.
Hoover, assignee, *v.* Wise *et al.*, 91 U. S. 308, 310.
Hotchkiss & Upton Co. *v.* Union Nat. B'k, 15 C. C. A. 264.

The fact that the non-assent of the stockholders to the guaranty, and their repudiation of the same, were then known to the bank, is shown pretty clearly by the circumstance—that in making the loans no distinction was made between Beattyville bonds indorsed and unindorsed, and no record kept which showed how many of the indorsed bonds were pledged to each loan. The guaranty added very much to the market value of the bonds before its validity was questioned, and if the bank had been ignorant of its repudiation, we may be reasonably sure that it would have noted the difference in its records between the bonds with the guaranty and those
232 without it. The burden to show want of notice and good faith in this matter is on the bank.

Stewart *v.* Lansing, 104 U. S. 505.
Smith *v.* Sac County, 11 Wall. 139.
Lytle *v.* Lansing, 147 U. S. 59.

With respect to forty-five bonds we do not think it has been sustained. Upon these bonds, therefore, the complainant below is entitled to have stamped under the endorsement of the guarantee the words "This guarantee is binding only on the Louisville, New Albany & Chicago Railway Company, a corporation of Kentucky. It is not binding on the Louisville, New Albany & Chicago Railway Company, a corporation of Indiana and Illinois." The complainant is also entitled to an order enjoining suit on these bonds against it as a corporation of Indiana and Illinois. We are able to make the order of partial cancellation of the guaranty, although the

Louisville Banking Company holds only as pledgee, because the pledgor, the improvement company, was a party to the action and to the decree of complete cancellation and has not appealed therefrom.

The Kentucky National bank holds eighteen bonds. It acquired five as collateral to a loan of $4,300 made January 9, 1890, to W. W. Jenkins; eight on a loan of $7,200 to Osborne & Co. January 11, 1890, and five on a loan to Wm. Cornwall for $3,500. These loans were all made by the bank, acting through its president, J. M. Fetter. Fetter was a director in the New Albany Company and knew that no petition of the stockholders for the guarantee had been filed with the board. Under the rule laid down in the Distilled Spirits case and other cases cited above, the bank must be charged with notice of the defect in the guarantee, so far as the ten bonds received on the Jenkins and Cornwall loans are concerned. It appears however that Fetter was a part owner in the Osborne bonds, and that the loan was in part for his benefit. Under these circumstances we think that the bank cannot be affected with the knowledge of Fetter in that transaction, and it appears that the other directors of the bank had no knowledge of the defect at all.

Innerarity *v.* Merchants' Nat'l Bank, 139 Mass. 332.
Read *v.* Doak, 22 U. S. App. 669.
Wilson *v.* Pauly, 72 Fed. Rep. 129.

The result is that with respect to the bonds received from Wm. Cornwall, Jr., who was a party to the decree below and who has not appealed, the same order of partial cancellation and injunction should be made as that already directed to be made in the case of forty-five bonds held as collateral by the Louisville Banking Company. With respect to the bonds received from Jenkins, the difficulty arises that Jenkins is not a party to this action or the decree below, and we cannot, without giving him the opportunity to show that he was a *bona fide* purchaser, make any order which may affect his rights as pledgor of the bonds. With respect to these bonds, therefore, the order will be to deny all relief and dismiss the bill without prejudice, unless the complainant shall make Jenkins a party, in which case, the question of notice to him and the bank will have to be relitigated. It may turn out that Jenkins
233 had no notice of any defect. If so, then the bank, by taking the bonds as a pledge, is a *bona fide* purchaser, even though it had notice. With the exceptions stated, *i. e.*, in regard to forty-five bonds held by the Louisville Banking Company, and ten bonds held by the Kentucky National bank, the decree of the circuit court is reversed, with directions to dismiss the bill at the cost of complainant.

234 And afterwards, on the same day, to wit, on June 22nd, 1896, the following decrees were filed in said court in said cause; which said decrees are in the words and figures following:

Decrees.

235 United States Circuit Court of Appeals for the Sixth Circuit.

LOUISVILLE TRUST CO.
v.
LOUISVILLE, NEW ALBANY & CHICAGO R. R. Co. } No. 277.

Appeal from the circuit court of the United States for the district of Kentucky.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the district of Kentucky, and was argued by counsel.

On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said circuit court in this cause be, and the same is hereby, reversed with costs and directions to dismiss the bill as to this appellant.

236 United States Circuit Court of Appeals for the Sixth Circuit.

LOUISVILLE BANKING CO.
v.
LOUISVILLE, NEW ALBANY & CHICAGO R. R Co. } No. 281.

Appeal from the circuit court of the United States for the district of Kentucky.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the district of Kentucky, and was argued by counsel.

On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said circuit court in this cause be, and the same is hereby, reversed at costs of the appellee, with directions to take further proceedings in accordance with the opinion.

237 And afterwards, to wit, on July 7th, 1896, the following order was entered upon the minutes of said court in said cause; which order reads and is as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

LOUISVILLE TRUST COMPANY, Appellant,
vs.
LOUISVILLE, NEW ALBANY & CHICAGO R. R. Co. and Cases to be Heard on Same Record, Nos. 277 to 295, inclusive. } Nos. 277 to 295. Appeal from the Circuit Court of the United States for the District of Kentucky, at Louisville.

And now comes The Louisville, New Albany & Chicago Railway Company, the appellee in the above-entitled causes, by its solicitors,

and moves the court to extend the time to September 1st, 1896, within which said appellee may file its petition herein, and to move thereon to modify the mandate entered in the above causes, and also to file its petition for rehearing herein.

And upon consideration thereof it is ordered that said time for filing said petition and entering said motion for the modification of said mandate and for filing a petition for rehearing be, and the same is hereby, extended to the said first day of September, 1896.

And afterwards, to wit, on August 31st, 1896, a petition for rehearing was filed in said court in said cause; which petition reads and is in the words and figures following:

Petition for Rehearing.

238 In the United States Circuit Court of Appeals for the Sixth Circuit.

LOUISVILLE TRUST COMPANY *et al.*, Appellants,
vs.
LOUISVILLE, NEW ALBANY AND CHICAGO RAILWAY COMPANY, Appellee.

Petition for rehearing.

Now comes the Louisville, New Albany & Chicago Railway Company, by counsel, and moves the court for a rehearing upon the following grounds:

This court holds:

1. That the act of April 8, 1880, created a corporation in Kentucky which became in fact a corporate citizen of Indiana and not of Kentucky, but nevertheless had its powers conferred exclusively by the Kentucky act.

2. That thereupon the stockholders, directors and officers of the Indiana incorporator of this Kentucky corporation became its stockholders, directors and officers, so that when directors and officers were elected by Indiana stock under and subject to the restrictions and limitations of Indiana law they became likewise directors and officers of the Kentucky company and as such were wholly
239 relieved from Indiana statutory restraints and limitations in their exercise of any additional or new powers conferred by the Kentucky act, and that such adoption of the Indiana corporate agencies of the New Albany by the Kentucky act occurred although the same was not mentioned therein.

3. That there were two distinct corporations of the same name, one in Kentucky and one in Indiana; that the one in the latter State is complainant in this suit; that the Kentucky corporation was authorized under Kentucky law to execute the contract for the purchase of the stock and to guarantee the bonds in payment therefor under the Kentucky amendment of 1882, and such Kentucky company was liable under this guaranty *quoad hoc* its corporate

property in Kentucky, notwithstanding this Kentucky company was not a party to this suit.

4. That the guaranty written on the bonds in question signed with the name of the Louisville, New Albany & Chicago Railway Company, by William Dowd, president, and attested by John A. Hilton, secretary, is the obligation of both the Indiana and Kentucky corporations.

5. That the guaranty in question, although a general engagement, obligates the property of the Kentucky corporation as well as the property of the Indiana corporation for the payment of all bonds so endorsed in the hands of innocent purchasers.

6. That the directors of the Indiana corporation had no authority whatever to endorse the guaranty in question upon any of the Beattyville bonds, but the actual endorsement thereon by direction of the directors bound the stockholders without their knowl-
240 edge or consent, notwithstanding their prompt repudiation of both contract and guaranty.

7. That the Kentucky company became a part of and entered into the consolidation of the Indiana and Illinois corporations without it appearing in the articles of consolidation that the Kentucky company was a party thereto, by name or reference, said articles being executed by the New Albany Company as an Indiana corporation and not as a Kentucky corporation.

8. That the amendment to the Kentucky act was a recognition not only of the consolidation, but that the Kentucky company was a party thereto, although such consolidation is not mentioned in such amendment expressly or by implication.

9. That this amendment was accepted by acts *in pais*.

10. That the Indiana statute authorized the Indiana New Albany to incorporate itself in Kentucky and to enter into a charter contract in that State.

11. That the company created by the consolidation of Indiana and Illinois corporations might accept the Kentucky amendment or act under the Indiana statute of 1883, touching the contract for the purchase of Beattyville stock and guaranty of its bonds without Illinois authority and without the knowledge or consent of the Illinois and Indiana stockholders.

12. That the directors of the consolidated Indiana and Illinois companies were authorized to bind this consolidated company by a general debt under this statute, without the knowledge, consent or action of the stockholders, and without acceptance of this domestic act by all the stockholders.

241 13. That the contract for the purchase of stock was valid under this statute of 1883, although the guaranty under that act was expressly limited to a guaranty for another contract which did not or could not include or comprehend the purchase of the Beattyville stock.

14. That the Indiana company, notwithstanding the consolidation, was a separate corporate entity in Indiana, and was therefore as such authorized to execute the contract in question, although its Indiana stock was limited to $3,000,000, and the contract for guar-

anty was an entirety, and provided for a guaranty of $2,225,000 of the Beattyville bonds, and said guaranty in that amount was expressly prohibited by the Indiana statute.

15. That this court holds that under general corporate power the directors were authorized to aid or benefit the business of the New Albany Company, through the purchase of Beattyville stock, but under the stock limit to $3,000,000, and under this contract for the purchase of the stock the New Albany would be unable to acquire a majority of the Beattyville stock, without which it would be unable to control the operation of the Beattyville road for its benefit.

16. That the court holds in effect that there is no difference between general and special powers, or between general and special corporate agents, and their respective authority as such, that the public may presume from the mere act of a special agent without recital or representation of corporate agency that he had the necessary power to make the special contract, notwithstanding the statute prohibited the execution of such contract except in the manner expressly provided in the statute.

242 17. That where a special power is vested by statute for exercise in a designated body the public may presume that the same has been exercised by such body from the mere act of some other body, or from the mere manual signature of an executive officer of the corporation.

18. That the mere act of the stockholders in electing directors clothed the directors with an appearance of authority to exercise special powers in addition to the general corporate powers, notwithstanding the legislature vested the exercise of such special power exclusively and directly in the stockholders.

19. That notwithstanding the question as to whether the Beattyville bonds were within the Indiana statute for guaranty had been expressly committed by the Indiana legislature to the stockholders for decision, persons purchasing the Beattyville bonds with the guaranty endorsed thereon might presume that that question had been determined by the stockholders even though such bonds were not within the Indiana statute.

20. That the stockholders did promptly determine this question at first notice, which this court wholly disregards.

21. The court holds that a statute expressly vesting a special power in the stockholders for exercise is a mere regulation between the members, the same as certain recitals in the articles of incorporation or provisions in by-laws, and that the public may presume from a mere act of an executive officer of the corporation that the stockholders have acted.

22. That the public may indulge a presumption which becomes a substitute for statutory special authority to the agent, and that this presumption arises in the absence of the receipt of the

243 consideration by the corporation and in the absence of recitals or representations sufficient to create or feed an estoppel.

We most respectfully submit that the conclusions of this court

and the grounds upon which they proceed, as stated and set forth in its opinion, do not apply to the statutes and powers here involved; that the gravity and importance of the controlling questions that arise upon this record, some of which are novel and affect great corporate interests in the United States, should be certified to the Supreme Court, that the decision thereof may become binding upon all circuit courts of appeal, which may be done by granting a rehearing herein; that this is especially true when it appears that, after elaborate argument and reargument of the controlling questions here involved before Mr. Justice Brewer and Judge Jackson (afterwards Mr. Justice Jackson), sitting in this case May 27, 1890, at Louisville, they sustained our contention, maintained the jurisdiction of the court upon the ground that the New Albany was not a Kentucky corporation, and granted the injunction, or refused to dissolve it, upon the ground that the same was not the guaranty of the New Albany Company, and it was not liable thereon, and that the Kentucky act of 1880, was a mere license or enabling act. That the conclusion then reached by these two eminent jurists was adopted by Judges Lurton and Barr, who sat together at the hearing of the demurrer to the supplemental bill, and was afterwards fully sustained by Judge Barr on final hearing, so that in Judge Barr's opinion appearing in this record, which is overruled by this court, he reflected the opinion of four Federal judges, including himself, two of the Supreme Court, and one the circuit judge of this court. With the judicial support of these four judges to our contention, we submit this petition and argument in its support with entire confidence.

(NOTE BY CLERK.—At the end of the printed argument, which followed the foregoing petition for rehearing, both under the same cover, appear the names of G. W. Kretzinger, E. Field, James S. Pirtle, for petitioners, which was omitted by stipulation.)

244 And afterwards, to wit, on the same day—that is, on August 31st, 1896—a petition for modification was filed in said court in said cause; which said *motion* reads and is in the words and figures following:

Petition for Modification, etc.

245 In the United States Circuit Court of Appeals for the Sixth Circuit.

LOUISVILLE TRUST COMPANY *et al.*, Appellants,
vs.
LOUISVILLE, NEW ALBANY AND CHICAGO RAILWAY COMPANY, Appellee.

Petition for modification of mandate, etc.

Motion to Amend Mandate and Argument in Its Support.

Now comes the Louisville, New Albany and Chicago Railway Company, by its solicitors, and moves this court to so modify its

mandate as made and entered in the above-entitled cause, and in numbers 278 to 295 inclusive, and by such modification permit appellee to apply to the court below for leave to file an amended and supplemental bill upon the remanding of said causes, and that the circuit court may by such modification, be permitted to grant such application, upon the following grounds, to wit:

1st. Said amended and supplemental bill meets and avoids
246 the defenses resting upon new matter alleged and set forth in appellants' answers, not otherwise met or avoided in said original bill.

2d. That said amended and supplemental bill shows that the Louisville, New Albany and Chicago Railway Company was and is a corporation created by the consolidation of Indiana and Illinois corporations, and that it had corporate power under the laws of said two States to make the guaranty here involved and as not otherwise shown in said original bill.

3rd. That it is shown by way of supplement that after the filing of the original bill herein, the holders of all the outstanding Beattyville bonds, including those having such guaranty endorsed thereon, declared the maturity thereof, under and by virtue of an agreement between the Beattyville Company and the trustee of the mortgage securing said bonds, said agreement being contained in said mortgage without the consent or knowledge of the Louisville, New Albany and Chicago Railway Company, and pursuant thereto and in proceedings to foreclose said mortgage the court adjudged that thereby said bonds matured on the 17th day of November, 1891, instead of on the first day of July, 1919, said last date being the date fixed for their maturity according to the tenor of said bonds upon which said guaranty was endorsed, whereby, and by reason whereof, and without the consent of the guarantor, the terms and tenor of said bonds and the liability of the guarantor thereon, became changed and varied, which in law and equity operated to discharge said guaranty and release the guarantor from all liability thereon, and that said supplemental matter does not appear in the original bill or in any subsequent amendment thereto, as appears from the record thereof.

247 4th. That appellee herewith submits to this honorable court said amended and supplemental bill as proposed, for inspection, which will render unnecessary further repetition of other and additional grounds for relief from such guaranty as therein stated and set forth.

(NOTE BY CLERK.—At the end of the printed argument, which followed the foregoing petition for modification of the mandate, both under the same cover, appear the names of G. W. Kretzinger, E. C. Field, James S. Pirtle, solicitors for complainant, which *was* omitted by stipulation.)

248 And afterwards, to wit, on August 31st, 1896, the following amended and supplemental bill was filed in said court in said cause, which reads and is as follows:

Amended and Supplemental Bill.

249 UNITED STATES OF AMERICA, }
District of Kentucky. }

Circuit Court of the United States, District of Kentucky.

LOUISVILLE, NEW ALBANY & CHICAGO RAILWAY COMPANY
vs.
OHIO VALLEY IMPROVEMENT AND CONTRACT COMPANY *et al.*
} In Chancery

Amended and supplemental bill of complaint.

To the honorable judges of the circuit court of the United States for the district of Kentucky, in chancery sitting:

Your orator, The Louisville, New Albany and Chicago Railway Company, by leave of the court first had and obtained, files this its amended and supplemental bill of complaint against the Richmond, Nicholasville, Irvine and Beattyville Railroad Company, the Ohio Valley Improvement and Contract Company, the Louisville Trust Company, the Kentucky National bank, and the Louisville Banking Company, all of which are and were at the date of the commencement of this suit corporations organized and existing under the laws of the State of Kentucky, and citizens of such State; Theodore Harris, Bernard Hollman, W. H. Dillingham, J. H. Leathers, M. A. Huston, Ben. C. Weaver, R. L. Whitney, R. Whitney, A. Schwabacker, S. A. Cannon, Burton A. Duerson, W. M. Charlton, J. A. Shuttleworth, A. J. Ross, John T. Bate, Jr., and W. C. Nones, all of whom are and were at the commencement of this suit citizens of the State of Kentucky.

That your orator, The Louisville, New Albany & Chicago Railway Company, was incorporated and organized under articles of association of date, December 31, 1872, which were duly filed and appear of record in the office of the secretary of state of said
250 State of Indiana, as the law requires, a copy of which articles of association are herewith filed, marked Exhibit A, and made a part hereof for reference; that by virtue of said articles of association and the laws of Indiana, orator was authorized to purchase at a foreclosure sale and operate, the line of railroad in said State of Indiana, described therein; that by said articles the stock issue of orator was fixed and limited at $3,000,000, divided into shares of $100 each; that said stock was issued and delivered as full paid and non-assessable in full payment for the railroad franchises and properties in said articles of association described and conveyed by virtue thereof to orator.

That of date April 8, 1880, the Kentucky legislature passed a private act entitled "An act to incorporate the Louisville, New Albany and Chicago Railway Company;" that the first section of

said act recites that the Louisville, New Albany and Chicago Railway Company, a "corporation organized under the laws of Indiana is hereby constituted a corporation," etc.; that the authority therein conferred was limited to the acquirement of terminal facilities in the city of Louisville and county of Jefferson, Kentucky; that it made no provision for stock, stockholders or directors, and orator avers that it was a mere enabling act limited to the acquirement of terminal facilities by orator as an Indiana corporation in Louisville for the operation of its Indiana road thereto for the receipt and delivery of interstate traffic; that orator by its funds and credit acquired and paid for said terminal facilities in Louisville, and fully equipped the same for use as the Louisville terminals of
251 orator's Indiana road, and that the same belong in law and in equity to orator, and are now and always have been used for that purpose.

That in the month of January, 1880, a corporation called the Chicago, Indianapolis and Air Line Railroad Company, hereafter called the air line company, was incorporated and organized under Indiana law to build and operate a line of railroad from Indianapolis, Indiana, to the Illinois State line, and about the same date a corporation called the Chicago and Dyer Railroad Company, hereafter called the Dyer Company, was incorporated and organized under Illinois law to construct and operate a railroad from Chicago to the Indiana State line; that shortly thereafter said air line and Dyer companies executed articles of agreement of consolidation under the name and style of The Chicago & Indianapolis Air Line Railway Company, a copy thereof is filed herewith and marked "Exhibit C," and made a part hereof for reference; that thereafter said proposed line of railroad from Indianapolis to the Illinois State line was acquired and completed; that of date May 5th, 1881, said air line and Dyer companies by the name and style of the Chicago, Indianapolis & Air Line Railroad Company signed articles of consolidation of their Illinois and Indiana franchises, etc., with the Indiana franchises of orator, a copy of which articles appears in the record of this cause (p. 42), to which reference is here made; that the stock of the constituent companies was surrendered and new stock of the consolidated Indiana and Illinois company was issued in exchange therefor as in said articles provided; that the corporation therein created was to be called and has since been known as the Louisville, New Albany & Chicago Railway Company;
252 that by virtue of said articles of consolidation the business and affairs of the constituents were to be managed by a board of directors to be annually elected according to law at such date and at such place as fixed by the by-laws of the consolidated corporation, and until the first election of such board the directors of the consolidated corporation were to be and were in fact composed of the then Indiana board of directors of orator; that pursuant thereto and of date August 9th, 1881, the following resolution was passed at a meeting of the board of directors of the consolidated company, in the words and figures following to wit:

"Whereupon, on motion of Mr. Sloan seconded by Mr. Vail, the

following proceedings and resolutions were unanimously adopted and ordered to be spread upon the records, viz:

"It appearing to the satisfaction of the directors that the articles of consolidation between the Louisville, New Albany and Chicago Railway Company of Indiana, and the Chicago and Indianapolis Air Line Railway Company of Indiana and Illinois have been fully and finally approved by the shareholders and directors of the two companies respectively, and the articles of consolidation finally and fully executed and delivered by the respective presidents and secretaries under the corporate seals of the companies, and have been lodged in the proper offices in Indiana and Illinois; and that the consolidation has been and is established, and that those who are present are a majority and quorum of the board of directors of the consolidated corporation, under the terms of the said articles of consolidation, therefore,

"Resolved, That the said action as above recited, be and the same is ratified and approved, and that the said articles of consolidation and the ratification thereof, whereby the present corporation was created, be spread at large upon our minutes."

And thereupon and thereafter there was only one set of executive officers, stockholders, directors, and but one management,
253 each and all of whom acted as stockholders, directors and officers of said consolidated corporation, and not as the stockholders, directors or officers of the constituent Indiana company, or of the constituent Illinois company.

That after the consolidation last aforesaid, to wit: April 7, 1882, the Kentucky legislature passed an act entitled, "An act to amend an act entitled, An act to incorporate the Louisville, New Albany & Chicago Railway Company," approved April 8, 1880, a copy of which is filed herewith, marked "Exhibit D," and made a part hereof for reference.

That the special powers therein conferred to guarantee the bonds of any railroad company in Kentucky, or to lease or consolidate with the roads of the class therein specifically mentioned, were expressly vested in the corporation for exercise, and the same could not be exercised by the directors without authority from the stockholders; that there was no Kentucky company of the name of orator that had either stockholders, directors or executive officers through whom said special powers, or any of them, could be exercised, and that the same could only be exercised by them by express permission, authority and consent of the legislatures of Indiana and Illinois, which was never given. That the Indiana legislature passed an act in 1883, which provided, among other things, as follows:

"3951*a*. Guarantee of bonds of another company.—The board of directors of any railway company organized under and pursuant to the laws of the State of Indiana, may, upon the petition of the holders of a majority of the stock of such railway company, direct the execution by such railway company of an endorsement guaranteeing the payment of the principal and interest of the bonds
254 of any railway company organized under or pursuant to the laws of any adjoining State, the construction of whose line

or lines of railway would be beneficial to the business or traffic of railway so indorsing or guaranteeing such bonds.

"3951*b*. Petition of stockholders.—2. The petition of the stockholders specified in the preceding section of this act shall state the facts relied on to show the benefits accruing to the company indorsing or guaranteeing the bonds above mentioned.

"3951*c*. Limitation of the power.—3. No railway company shall, under the provisions of this act, indorse or guarantee the bonds of any such railway company or companies as is above mentioned to an amount exceeding one-half of the par value of the stock of the railway company so indorsing or guaranteeing, as authorized under this act."

That said Indiana act was special and not general; that it withheld the power to guarantee from all Indiana companies whose lines of railway did not extend across the State, and withheld from the benefit of such guaranty all bonds of all railways in Kentucky, the construction of which would not aid or benefit the traffic of such Indiana company whose line extended across said State, and orator avers that any attempt at guaranty by an Indiana company whose lines did not extend across the State, or a guaranty by it upon any bonds of a Kentucky railway which in its operation would not be beneficial to the business and traffic of such Indiana company, would be without legislative authority and therefore wholly null and void; that the exclusive power to determine what Kentucky railway in its operation would be beneficial to the business and traffic of an Indiana company was vested in the stockholders, and without an affirmative determination thereof by said stock-
255 holders evidenced by a petition to the directors to direct a guaranty, any attempted guaranty of the bonds of any Indiana company would be wholly null and void.

That the Richmond, Nicholasville, Irvine & Beattyville Company, hereafter called the Beattyville Company, is a corporation organized under the laws of the State of Kentucky, with corporate authority to build and operate a line of railroad extending from Versailles to Beattyville, wholly in said State; that the shortest distance from orator's southern terminus to the nearest point of the proposed line of railroad of said Beattyville Company was and always has been about 65 miles.

That the Ohio Valley Improvement & Contract Company, hereafter called the contract company, is a corporation organized under the laws of the State of Kentucky, with franchises and authority to build and construct railways; that of date October 11, 1888, said contract company made its written contract with said Beattyville Company, a copy of which appears attached to orator's original bill filed herein marked Exhibit A and the same is here referred to as a part hereof; that therein said contract company agreed with the Beattyville Company to build and equip its line of road and to receive in full payment therefor about $550,000 of municipal bonds voted to the Beattyville Company and $25,000 per mile of its first-mortgage bonds, and its full issue of capital stock less about $550,000

thereof, said bonds and the capital stock of said company to aggregate respectively about $2,250,000.

That October 5, 1889, a special meeting of the directors of said consolidated New Albany Company was convened in the city of New York, at which were present eight of the thirteen direct-
256 ors of said consolidated New Albany; that at said meeting the following resolution as the same now appears spread at large in the record of the proceedings of said meeting was submitted to said eight persons so convened as the majority of the directors of said consolidated New Albany as aforesaid:

"The president laid before the board a proposal submitted by Mr. A. E. Richards, president of the Ohio Valley Improvement and Contract Company, for transfer to this company of three-fourths of the entire capital stock of the Richmond, Nicholasville, Irvine and Beattyville Railroad Company, for the consideration of the guaranty of the principal and interest of the bonds of the said company by this company, in accordance with the following proposed agreement:

"On motion of Mr. Cook, seconded by Mr. Hitt, it was resolved that the company will guarantee the principal and interest of said bonds on the terms proposed, and that the president, or vice-president and assistant secretary of this company be and they hereby are authorized to execute and deliver said agreement under the seal of the company."

That said resolution was so submitted, considered and adopted in the manner aforesaid without any petition from a majority of the stockholders of said consolidated New Albany as required in said Indiana statute of 1883, and without which said directors had no authority whatever to act in the premises.

That on and about October 9th, 1889, William Dowd, acting as president, and John A. Hilton, acting as assistant secretary of said consolidated New Albany Company of Illinois and Indiana
257 and pretending to act for it signed in its name and on its behalf said contract, wherein and whereby they attempted to bind said Indiana and Illinois New Albany Company, to guarantee the payment of the principal and interest of $2,225,000 of the mortgage bonds of said Beattyville Company, issued and delivered to said contract company and agreed in and by said contract to accept as consideration therefor three-fourths of the entire capital stock of the Beattyville Company from said contract company, the aggregate issue of which stock was fixed at and limited to $2,225,000 as aforesaid, a copy of said agreement appearing in the record, at page 2, is by reference thereto made a part hereof.

That some time in the month of December, 1889, certain persons assuming to act as the executive officers of said Indiana and Illinois Consolidated Company under and by virtue of said alleged resolution of the directors of said consolidated company, and by virtue of said agreement with said contract company, placed upon 600 of said Beattyville bonds a guaranty in the following words:

"For value received the Louisville, New Albany & Chicago Railway Company hereby guarantees to the holder of the within bond

the payment by the obligor thereon, of the principal and interest thereof in accordance with the tenor thereof."

That on the day and night of March 11, 1890, said Dowd as president, and said Hilton as assistant secretary and treasurer of said consolidated New Albany, signed the form of guaranty aforesaid upon 585 more of said bonds; that on the next day, to wit:

March 12, 1890, the regular meeting of the stockholders of
258 the consolidated New Albany convened for the election of a board of directors for the next ensuing year, and to transact such other business as might come before it. That said eight persons who attempted at said special meeting of said directors to authorize the execution of said agreement with said contract company, for the purchase of said Beattyville stock and the guaranty of said Beattyville bonds as aforesaid, and nearly all of the other directors were voted out of office, and other stockholders of said consolidated New Albany were elected as their successors, and thereupon said stockholders' meeting adjourned until March 22d, 1890, before which date said new directors organized by the election of executive officers, and thereupon said board reported to said adjourned stockholders' meeting said contract of guaranty and its attempted execution by its former executive officers, which was the first knowledge said stockholders had touching or concerning the same, and the first knowledge or notice they had touching the passage of said resolution by said eight persons under which the execution of said contract for said guaranty was attempted; that immediately upon receipt of said notice and knowledge at said adjourned meeting of said stockholders, said contract for the purchase of said Beattyville stock and the attempted guaranty of said Beattyville bonds in consideration thereof, and all guaranties attempted thereunder or pursuant thereto as aforesaid, were wholly repudiated and rejected by resolution adopted by a vote of over 32,000 shares out of 50,000 shares of said consolidated stock, and it was declared that neither said contract or any guaranty attempted thereunder was of any binding force or effect whatever, and by further resolution of

said directors and stockholders their executive officers
259 were expressly directed to proceed as they might be advised by counsel to have said contract for guaranty and said attempted guaranty thereunder canceled and set aside, which constituted a full, final and binding decision by said stockholders that said Beattyville road would not in its construction or operation aid or benefit the traffic or business of orator, and thereupon and pursuant thereto this suit was instituted; that the persons constituting the majority of the board of directors of said consolidated New Albany who passed the resolution aforesaid authorizing the execution of said agreement with said contract company for the purchase of said stock and guaranty as aforesaid, at the time of the passage of said resolution were the owners of not to exceed four hundred shares of said consolidated stock, and that no other directors or holders of said stock had any notice or knowledge thereof prior to the 12th day of March, 1890. That this suit was instituted and the original bill filed herein on the 9th of April, 1890, after the repu-

diation of said contract for guaranty and said guaranties attempted thereunder on the 22nd day of March, 1890, as aforesaid.

Orator denies that said Indiana and Illinois corporation—said consolidated New Albany—had any legislative authority or corporate capacity to make said agreement with said contract company or to execute said guaranty in performance thereof, on its part, and avers that for want of corporate power so to do, said contract and the guaranty of said Beattyville bonds attempted thereunder, are total nullities; and to more fully show the want of requisite corporate capacity and legislative authority to execute said contract and make said guaranty aforesaid, and to meet certain af-
260 firmative defenses set up by defendants or some of them in their answers to orator's original bill herein, orator says:

That the defendants, or some of them, give out and allege that they are the holders of some of said Beattyville bonds with said endorsement or guaranty thereon, and said defendants, or some of them, pretend that the same constitutes a valid and binding obligation upon orator, as the guarantor thereof, which orator denies; and to maintain its denial in this behalf, orator shows that said Kentucky act of April 8, 1880, did not constitute an incorporation of orator as a Kentucky corporation, but was only a mere legislative license to authorize it to acquire terminal facilities in the city of Louisville, county of Jefferson and State of Kentucky, and to transact, by the use thereof, interstate business; that before the passage of said act there was no law in force in the State of Kentucky which directly or indirectly prohibited orator from acquiring terminal facilities in the city of Louisville, county of Jefferson, and in transacting thereat its interstate business, and therefore orator avers that without such act it had full authority and right so to do; that orator never at any time, either by vote of its Indiana stockholders or directors, or by any action whatever by its executive officers accepted said Kentucky act as its Kentucky charter. That orator as an Indiana corporation, its executive officers, directors or stockholders, never at any time acted under said Kentucky act as a Kentucky corporation or as stockholders, directors or officers thereof; that said consolidated New Albany, its stockholders or executive officers, never at any time accepted or acted under said Kentucky act as a Kentucky corporation; and orator avers that said
261 New Albany, neither as a corporation of Indiana or as a consolidated corporation of Indiana and Illinois, had no statutory authority whatever to make any charter contract with the State of Kentucky, or as a corporation to become incorporated in said State of Kentucky.

That the defendants, or some of them, pretend that said guaranty was authorized by Kentucky amendment of 1882, which orator denies, and avers that orator as an Indiana corporation neither by any act or conduct on its part or by its executive officers, directors or stockholders on its behalf or in its name ever accepted or acted under said amendment in any manner, matter or thing; and further avers that without express authority from and permission of the legislature of the State of Indiana, and without express author-

ity and consent from its stockholders, orator had no lawful authority by or through its directors or executive officers to embark or hazard its corporate funds or credit by investing the same in another business, to wit, in the purchase of the Beattyville stock, or to construct or to aid in the construction of the Beattyville road, and that all corporate powers vested in orator's board of directors for exercise were expressly limited by Indiana law to the business which orator was incorporated and organized to conduct as the same is defined and described in and restricted by its articles of incorporation and the statutes of Indiana pertaining thereto.

Orator avers that the lease executed by the Louisville Southern to said consolidated New Albany recited in its first preamble that by the terms of an agreement dated the 21st day of June, 1887, between said Southern Company and the Kentucky and In-
262 diana Bridge Company, said Southern Company had an entrance into the city of Louisville to a point of connection with the Short Route Railway Transfer Company, and an extension of its line over the bridge of said bridge company into Indiana to a point of connection with the New Albany road in said State, and that the New Albany Company had constructed, owned and then operated a railroad through Indiana which met and connected as aforesaid with said Louisville Southern railroad at said Indiana line in Indiana. And orator avers that the leasehold granted by said Louisville Southern began at New Albany in Indiana and extended over the bridge across the river under the Louisville Southern's bridge contract with the privilege of its Louisville terminal facilities, etc.; that whatever Louisville terminals may have been acquired by said consolidated New Albany under the Kentucky license or act of 1880 were neither described in, affected or covered by said lease, and that said lease brought the Louisville Southern into the State of Indiana to a connection with orator's road at New Albany, without reference to and without the use of any of said terminal facilities theretofore acquired by it in said city of Louisville, a copy of which is herewith filed as Exhibit "D" for reference.

The authority to guarantee bonds by said Indiana act was expressly limited to the bonds of railways in adjoining States that would be "beneficial to the business or traffic of the" railway so endorsing or guaranteeing such bonds and orator charges that said contract with said contract company for the guaranty of said bonds was not upon or for said statutory consideration, to wit: that the guaranty of said bonds "would be beneficial to the business
263 or traffic" of orator, the guarantor thereof, but for another and different consideration not contemplated in or authorized by said statute, to wit: the purchase of Beattyville stock as aforesaid.

And orator avers that at the date of said attempted guaranty and at the date defendants claim to have purchased said Beattyville bonds no part of said Beattyville road was completed or in operation, and that only a small part thereof was in process of construction and only a part thereof has ever been built.

That said Indiana statute expressly withholds from any Indiana

company authority to endorse or guarantee bonds in an amount exceeding one-half of the par value of its stock; that as heretofore stated and shown, the stock of the Indiana New Albany and the face value of the issue thereof was expressly limited by its articles of incorporation, to $3,000,000, divided into shares of one hundred dollars each; that said contract for the purchase of said Beattyville stock and for the guarantee of said bonds is an entirety and is for the guaranty of $2,225,000 face value of bonds, which is $725,000 in excess, of one-half of the face value of said authorized Indiana stock, and therefore said contract was beyond the lawful authority of the New Albany as an Indiana corporation to execute or perform, and orator denies that the same was ever authorized by the stockholders or directors or that the same was signed by the executive officers of the Indiana New Albany.

That orator further shows that said Indiana statute above quoted embraced and only extends to domestic corporations of the State of Indiana and that the same does not extend to or include interstate companies, formed by the consolidation of Indiana corporations with an Illinois company.

264 That said consolidated New Albany Company could not binds it- consolidated property, railroad franchises or income by said contract or guaranty of said Beattyville bonds attempted thereunder, without express authority so to do from the legislature of both of the States of Indiana and Illinois, and orator avers that there was no law in force in the State of Illinois, which authorized said agreement with said contract company for the purchase of Beattyville stock, or to guarantee the Beattyville bonds thereunder, whether in payment for Beattyville stock or for any other consideration, or upon any other ground whatever, and therefore orator avers that said resolution of said directors of said consolidated company and said agreement with said contract company signed by the executive officers of said consolidated company and said attempted guaranty of said bonds signed by the said executive officers of said consolidated company, and each of them were total nullities, for want of lawful authority to make and execute.

And orator avers that said eight persons so assuming as directors to authorize the execution of said contract and guarantee had full knowledge of all the matters and things aforesaid.

Orator further shows that the Beattyville bonds upon which the guaranty is alleged to have been made bore date July 1, 1889, and were to mature thirty years after the date thereof, to wit: July 1, 1919; that said bonds were secured by a certain mortgage executed by said Beattyville Company, upon its Kentucky road and franchises bearing even date with said bonds; that among other things it was provided in said mortgage, to wit:

"If any of the interest coupons secured by this deed of trust
265 shall remain unpaid more than six months after they shall have become due, and shall have been presented, and the payment thereof demanded at the place where they are payable, the principal sum mentioned in each and all of said bonds shall at the option of the holders of a majority of the bonds secured thereby and

then outstanding and unpaid, become forthwith due and payable. Said option shall be exercised by written notice thereof given to said trustee, and shall take effect and cause the principal of said bonds to become due as soon as such notices shall have been served upon the trustee. * * *

"If any of the bonds or coupons shall remain unpaid after the principal shall have become due, either according to their tenor or by default in payment of coupons as hereinbefore provided, it shall be the duty of the trustee upon request thereto in writing made by the holders of a majority of the bonds then outstanding and unpaid" to enforce said security by possession or foreclosure, or both. And orator shows by way of supplement to its bill of complaint herein, that on the second day of December, 1891, the Central Trust Company of New York, as trustee, named in the said Beattyville mortgage, filed its bill of complaint in the circuit court of the United States, for the district of Kentucky, therein alleging among other things, that said Beattyville Company had made such default in payment of its interest upon said bonds that the holders thereof were entitled to and on the 17th day of November, 1891, did give written notice to the said trustee in the manner required therein that they had elected to, and in fact had, exercised their option to have the principal of said bonds to become forthwith due and payable, and pursuant thereto, demanded that said trustee pro-
266 ceed to enforce the security in payment of the principal and interest of said bonds, which was done by the filing of said bill to foreclose as aforesaid.

That orator was not a party to said mortgage or to said bill to foreclose said mortgage, and no guaranty upon said bonds was mentioned therein.

That orator never consented to said change or substitution of date for the maturity of said bonds, and had no knowledge thereof until long thereafter.

That on July 9, 1894, final decree for foreclosure and sale was entered in said cause, wherein the court adjudged that the principal of said bonds had become due and payable by virtue of the exercise of the option by the bondholders, as in said trust deed provided.

That June 9th, 1894, a final decree was entered in said foreclosure suit adjudging that the holders of the bonds had in the exercise of their option made the principal to mature and become payable on November 17, 1891, and thereupon the court decreed that "$2,334,000 of the principal sum specified in the said mortgage bonds aforesaid, together with interest aforesaid, has now become due and payable," etc.

That said court by said decree further reserved jurisdiction of said cause for the purposes expressed therein, to thereafter render further money judgment in favor of the holder or holders of said bonds for any balance, with principal and interest thereon that might remain unpaid after the application thereto of the full net proceeds from the mortgage sale of said property made applicable by said decree to the payment thereof.

And orator avers that even if said guaranty was valid the
267 endorsement thereof upon said bonds did not make the guarantor a party to said Beattyville mortgage, and that the liability of such guarantor could only be determined and fixed by the face, tenor and effect of said bonds; that the exercise by the holders of said bonds of said option contained in said trust deed as aforesaid, to declare the principal of said bonds due by reason of default in the principal and interest, constituted a waiver on their part of the terms and tenor thereof for maturity on which said guaranty was endorsed, and that the change of the date for the maturity of said bonds from July 1, 1919, to the 17th day of November, 1891, without the knowledge or consent of said guarantor fully released it from all further or any liability whatever upon said guaranty.

Orator further avers that said optional agreement was wholly between the said Beattyville Company, said bondholders and their trustee, and that orator was not a party thereto, and that the exercise of said option by said bondholders, as aforesaid, varied and changed the terms of said bonds upon which said guarantees were endorsed, and that such change operates in law and in equity to relieve the guarantor of all liability thereon, and that the same cannot be enforced in law or in equity against your orator.

Orator further states that there is no provision in or upon any of said bonds upon which said guaranty was endorsed, referring to or in anywise adopting said Beattyville mortgage, or any of the covenants or provisions therein contained, except a mere reference to said mortgage as a security in the following words:

"To which deed of trust and provisions and conditions thereof reference is hereby made."

268 Orator avers that if said reference to said mortgage makes said mortgage or deed of trust a part of said bond the two become one contract, or a part of said guaranty, so as to extend said guaranty thereto, or so as to bind the guarantor by any of its terms or provisions, or by the exercise of said option by the holders of said bonds, then and thereby the negotiability of said bonds, as well as of the guaranty endorsed thereon is destroyed, and the purchasers thereof took the same subject to all defences in law or equity that the maker of said bond or the guarantor thereon may have.

Orator further shows that soon following the judgment of reversal by the United States circuit court of appeals of the decree of this court entered upon the original bill of complaint herein, in and by which said decree the said contract and guaranty were adjudged to be null and void, certain holders of the said Beattyville bonds brought suit in the city of Louisville against orator as an Indiana corporation, alleging in their said complaints filed therein against orator that the said Beattyville Company had failed and refused to pay the interest due and maturing upon the said bonds from and since July 6, 1891; that the payment of the said interest was demanded of the said Beattyville Company on the days when the same became due, but the said company had no funds with which to pay the same; that by reason of the default in the payment of

the said interest, and pursuant to the conditions contained in the said trust deed securing the same, the holders of the majority of the said bonds secured by said trust deed elected to have and declare the principal of all of the said bonds due and payable, and thereupon prayed for judgment against orator for the entire principal and interest accruing upon the said bonds from the beginning.

269 Orator claims, and will insist that the paper written and dated October 9, 1889, and each of the 1,185 pretended signed and sealed instruments, in the name of orator upon said Beattyville bonds are illegal and void documents, which upon their face may purport to bind orator, but are in fact no legal obligations whatever, and that none of the defendants have any right to hold, dispose of or transfer such pretended obligations of orator, but each and every of the defendants should be perpetually enjoined from claiming or enforcing any liability by reason thereof against orator, or from enforcing or attempting to enforce in any court any liability by reason thereof against orator or its property; that orator has tendered back to said improvement company all the shares of Beattyville stock received by orator's officers from it, and said stock has been delivered to the clerk of this court for the purpose of making good said tender.

Orator avers upon information and belief, and charges the truth to be that many of said bonds are in possession of persons whose names are unknown to orator, but when their names and alleged ownership of said bonds or any of them become known to orator, it will, by leave of the court first had and obtained, make them parties defendant hereto by apt words, and claim the relief against them hereinafter prayed.

Forasmuch as orator has for such grievances no adequate remedy at law, but can only obtain relief in equity, it files this amended and supplemental bill, and the premises considered, prays that the defendants heretofore named and summoned, and now parties defendant to the original bill of complaint, and amendments thereto, to wit: the said The Ohio Valley Improvement and Contract

270 Company, Louisville Trust Company, Kentucky National Bank, W. C. Nones, B. Hollman, Louisville Banking Company, Theodore Harris, Benj. C. Weaver, Jr., James A. Shuttleworth, John H. Leathers, John T. Bate, Jr., M. A. Huston, A. J. Ross, W. M. Charlton, B. A. Duerson, Ronald Whitney, R. L. Whitney, S. A. Cannon, W. H. Dillingham and Abraham Schwabacher be required pursuant to the practice of this court, to answer this amended and supplemental bill of orator, but not under oath, and be compelled to stand to and abide by such orders and decrees as the court may from time to time enter in this cause, and that the injunction heretofore issued in this cause be revived and held against said defendants and each of them until the final hearing hereof; that on final hearing the court will decree the said paper-writing dated October 9th, 1889, and purporting to bind your orator to endorse all of the first-mortgage bonds of the said Beattyville Railroad Company, and each of the 1,185 pretended endorsements so as aforesaid actually placed on such bonds to be illegal and wholly void and that the same and

every thereof, not heretofore cancelled, voluntarily or pursuant to some order of this court not appealed from, shall be delivered up to be cancelled and forever destroyed, and each and every of the defendants hereto and that may hereafter be brought in and made parties defendant hereto personally enjoined from claiming any rights hereunder, and from selling, transferring or encumbering or parting with the possession of any of said Beattyville bonds bearing thereon such pretended endorsement of orator, and enjoined from bringing any suit thereon until such time as the court may order each and all of such bonds having such endorsement
271 to be deposited in the registry of the court to await the enrollment of final decree cancelling all such illegal and void endorsements by orator, and that the court will grant such other and further relief as may seem just and necessary to fully establish and protect the equities of your orator.

LOUISVILLE, NEW ALBANY & CHICAGO
RAILWAY COMPANY,
By G. W. KRETZINGER,
E. C. FIELD,
JAMES S. PIRTLE, *Solicitors.*

UNITED STATES OF AMERICA, }
District of Kentucky. }

Circuit Court of the United States for said District.

LOUISVILLE, NEW ALBANY & CHICAGO RAILWAY COMPANY }
vs. }
OHIO VALLEY IMPROVEMENT & CONTRACT COMPANY *et al.* }

STATE OF ILLINOIS, }
County of Cook, } *ss:*

—— ——, on oath states that he is connected with the law department of the Louisville, New Albany & Chicago Railway Company, and as such is authorized to make this affidavit; that he has read the foregoing bill and knows the contents thereof, and that the matters therein stated and set forth are true, as he verily believes.

Subscribed and sworn to before me on this — day of ——, 1896.

—— ——.

272 And afterwards, to wit, on October 5th, 1896, the following order was filed in said court in said causes; which order reads and is as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

LOUISVILLE TRUST COMPANY
vs.
LOUISVILLE, NEW ALBANY & CHICAGO R. R. Co. and Cases Heard on Same Record, Being Nos. 278 to 295, Inclusive.

No. 277. Appeals from the Circuit Court of the United States for the District of Kentucky, at Louisville.

The petition for rehearing and also the petition to modify the mandate, etc., filed in the above-entitled causes are hereby denied by order of the court.

And afterwards, to wit, on October 15, 1896, a stipulation was filed in said court in said causes; which stipulation reads and is in the words and figures following:

273 United States Circuit Court of Appeals for the Sixth Circuit.

LOUISVILLE TRUST COMPANY *et al.*, Appellants,
vs.
LOUISVILLE, NEW ALBANY & CHICAGO RAILWAY COMPANY, Appellee.

F. O. Loveland, clerk.

SIR: In making a transcript of the record herein to be used by appellee upon motions in the Supreme Court of the United States for writs of certiorari herein you will follow the directions contained in the stipulation of parties this day filed in your office. The transcript under the above-named directions will include:

Record page.

all the orders in the United States circuit court of appeals, sixth circuit, the opinion of the court of appeals, motion of appellee for rehearing, petition of appellee to modify mandate, omitting the argument in its report, proposed amended bill offered by appellee.

275 This præcipe and stipulation of counsel filed in office.

JAMES S. PIRTLE, *For Appellee.*
ST. JOHN BOYLE, *Attorney.*
NOBLE & SHERLEY,
BARNETT, MILLER & BARNETT,
For Louisville Banking Co.
ALEXANDER P. HUMPHREY,
GEO. M. DAVIE, *For Ky. Nat. Bank.*

Endorsed on back: United States circuit court of appeals, sixth circuit. Louisville Trust Co. *et al.*, appellants, *vs.* Louisville, New Albany & Chicago Railway Company, appellee. Stipulation. Filed October 15, 1896. Frank O. Loveland, clerk.

276 And afterwards, on the same day, to wit, on October 15, 1896, a stipulation was filed in said court in said causes; which stipulation is in the words and figures following:

277 United States Circuit Court of Appeals for the Sixth Circuit.

LOUISVILLE TRUST COMPANY *et al.*, Appellants,
vs.
LOUISVILLE, NEW ALBANY & CHICAGO RAILWAY COMPANY, Appellee.
} Stipulation.

It is agreed between the appellants and the appellee herein that the said appellee may take the record in the case of The Louisville Trust Company against the appellee and the record in the case of Louisville Banking Company against the appellee, omitting all matter referring exclusively to the cases of the other appellants in this record, in making up the record for the application by appellee to the Supreme Court of the United States for a writ of certiorari; and

It is further agreed that the determination of the motion for certiorari in said two cases shall control in all the other cases not specially named, and if the Supreme Court of the United States shall cause the writ to issue the affirming or reversing by the Su-

preme Court of the United States of the judgment of the circuit court of appeals in the sixth circuit in the said two specially named cases shall have the same effect as if all the said cases not specifically named had been removed by writ of certiorari to the Supreme Court of the United States and by said court affirmed or reversed, and the same order of affirmation or reversal shall be entered in all the cases, as well *as* those specially named as those not specially named.

It is further stipulated by the appellants and appellee that in making up the record herein for the purpose of said motions for writs of certiorari as aforesaid the clerk of the court shall omit from the record the answers of all the appellants except the two above specially named and their several proceedings for an appeal
278 taken in the United States circuit court, district of Kentucky.

It is further stipulated and agreed that the said motions in the Supreme Court of the United States and said cases, if the motions should be granted, shall be heard upon the record stipulated as above, for the reason that the pleadings and proceedings in the said two cases of Louisville Trust Company, appellant, and The Louisville Banking Company, appellant, against The Louisville, New Albany & Chicago Railway Company, appellee, present the full issues involved in this record.

ST. JOHN BOYLE, *Attorney.*
NOBLE & SHERLEY,
BARNETT, MILLER & BARNETT,
For Louisville Banking Co.
ALEXANDER POPE HUMPHREY,
GEO. M. DAVIE, *For Ky. Nat. Bank.*

JAMES S. PIRTLE,
For Appellee.

(Endorsed on back :) United States circuit court of appeals, sixth circuit. Louisville Trust Company *et al.*, appellants, *vs.* Louisville, New Albany & Chicago R'y Co., appellee. Agreement. Filed October 15, 1896. Frank O. Loveland, clerk.

279 United States Circuit Court of Appeals for the Sixth Circuit.

I, Frank O. Loveland, clerk of the United States circuit court of appeals for the sixth circuit, do hereby certify that the foregoing is a true and correct copy of the parts of the record mentioned in a stipulation filed in the clerk's office October 15, 1896, relative to the preparation of transcript of the record in the case of The Louisville Trust Company *v.* Louisville, New Albany & Chicago Railroad Company and The Louisville Banking Company and seventeen other appeals against the same appellee, numbered 277 to 295, inclusive, of the October term, 1895, as the same remains upon the files and records of the said United States circuit court of appeals for the sixth circuit and of the whole thereof.

Seal United States Circuit Court of Appeals, Sixth Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals for the sixth circuit, at the city of Cincinnati, Ohio, this seventeenth day of October, 1896.

FRANK O. LOVELAND,
Clerk of the United States Circuit Court of Appeals for the Sixth Circuit.

280 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the sixth circuit, Greeting:

Being informed that there is now pending before you a suit in which The Louisville Trust Company is appellant and The Louisville, New Albany & Chicago Railway Company is appellee, which suit was removed into the said circuit court of appeals by virtue of an appeal from the circuit court of the United States for the district of Kentucky, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into the Supreme
281 Court of the United States, do hereby command you that you send without delay to the said Supreme Court as aforesaid the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 18th day of November, in the year of our Lord one thousand eight hundred and ninety-six.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

UNITED STATES OF AMERICA, *Sixth Judicial Circuit,* } *ss:*

I hereby make return of this writ pursuant to a stipulation of counsel filed this 24th day of November, 1896, which is as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

LOUISVILLE BANKING COMPANY, Appellant,
vs.
LOUISVILLE, NEW ALBANY & CHICAGO RAILWAY COMPANY, Appellee,
and
LOUISVILLE TRUST COMPANY, Appellant,
vs.
LOUISVILLE, NEW ALBANY & CHICAGO RAILWAY COMPANY, Appellee.
} Stipulation.

It is hereby stipulated by counsel for the appellants and appellee

that the record filed in the Supreme Court of the United States, with the petition for certiorari, in the above-entitled causes may be taken as a return by the clerk of the circuit court of appeals to the writs of certiorari in the said causes, and that this stipulation or a copy thereof may be returned, with the said writs, to the Supreme Court of the United States as a return to said writs.

Signed this 23rd day of November, 1896.

ST. JOHN BOYLE,
For Lou. Trust Co.
JAMES S. PIRTLE,
Solicitor for Appellee.

BARNETT, MILLER & BARNETT,
SHACKELFORD MILLER,
Solicitors for Lou. Banking Co.

Done at Cincinnati, Ohio, this 24th day of November, 1896.

[Seal United States Circuit Court of Appeals, Sixth Circuit.]

FRANK O. LOVELAND,
Clerk of the United States Circuit Court of Appeals for the Sixth Circuit.

282 [Endorsed:] 16,424. Supreme Court of the United States. No. 254. October term, 1897. The Louisville Trust Company *vs.* The Louisville, New Albany & Chicago R'y Co. Writ of certiorari and return. Filed Nov. 27, 1896.

283 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the sixth circuit, Greeting:

Being informed that there is now pending before you a suit in which The Louisville Banking Company is appellant and The Louisville, New Albany & Chicago Railway Company is appellee, which suit was removed into the said circuit court of appeals by virtue of an appeal from the circuit court of the United States for the district of Kentucky, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into the Supreme
284 Court of the United States, do hereby command you that you send without delay to the said Supreme Court as aforesaid the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 18th day of November, in the year of our Lord one thousand eight hundred and ninety-six.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

UNITED STATES OF AMERICA, }
Sixth Judicial Circuit, } *ss:*

I hereby make return of this writ pursuant to a stipulation of counsel filed this 24th day of November, 1896, which is as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

LOUISVILLE BANKING COMPANY, Appellant,
vs.
LOUISVILLE, NEW ALBANY & CHICAGO RAILWAY COMPANY, Appellee,
and
LOUISVILLE TRUST COMPANY, Appellant,
vs.
LOUISVILLE, NEW ALBANY & CHICAGO RAILWAY COMPANY, Appellee.
} Stipulation.

It is hereby stipulated by counsel for the appellants and appellee that the record filed in the Supreme Court of the United States, with the petition for certiorari, in the above-entitled causes may be taken as a return by the clerk of the circuit court of appeals to the writs of certiorari in the said causes, and that this stipulation or a copy thereof may be returned with the said writs to the Supreme Court of the United States as a return to said writs.

Signed this 23rd day of November, 1896.

ST. JOHN BOYLE,
For Lou. Trust Co.
JAMES S. PIRTLE,
Solicitor for Appellee.

BARNETT, MILLER & BARNETT,
SHACKELFORD MILLER,
Solicitors for Lou. Banking Co.

Done at Cincinnati, Ohio, this 24th day of November, 1896.

[Seal United States Circuit Court of Appeals, Sixth Circuit.]

FRANK O. LOVELAND,
Clerk of the United States Circuit Court of Appeals for the Sixth Circuit.

285 [Endorsed:] 16,425. Supreme Court of the United States. No. 255. October term, 1897. The Louisville Banking Co. *vs.* The Louisville, New Albany & Chicago R'y Co. Writ of certiorari and return. Filed Nov. 27, 1896.